ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2016–0202; FRL–9986–53–OAR]

RIN 2060–AS82

Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing nonattainment area and ozone transport region (OTR) implementation requirements for the 2015 ozone national ambient air quality standards (NAAQS) (2015 ozone NAAQS) that were promulgated on October 1, 2015. This final rule is largely an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS, and we are retaining without significant revision the majority of those provisions to implement the 2015 ozone NAAQS. This final rule addresses a range of nonattainment area and OTR state implementation plan (SIP) requirements for the 2015 ozone NAAQS, including attainment demonstrations, reasonable further progress (RFP) and associated milestone demonstrations, reasonably available control technology (RACT), reasonably available control measures (RACM), major nonattainment new source review, emissions inventories, the timing of required SIP submissions and compliance with emission control measures in the SIP. The EPA is not taking any final action regarding our proposed approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements; the agency intends to address any revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking.

DATES: This final rule is effective on February 4, 2019.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID No. EPA–HQ–OAR–2016–0202. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further general information on this final rule, contact Mr. Robert Lingard, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, at (919) 541–5272 or *lingard.robert@epa.gov*; or Mr. Butch Stackhouse, OAQPS, U.S. EPA, at (919) 541–5208 or *stackhouse.butch@epa.gov*. For information on the Information Collection Request (ICR), contact Mr. Butch Stackhouse, OAQPS, U.S. EPA, at (919) 541–5208 or *stackhouse.butch@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

ACT Alternative Control Techniques
AERR Air Emissions Reporting Requirements
AVERT AVoided Emissions geneRation Tool
BSMP Basic Smoke Management Practices
CAA Clean Air Act
CFR Code of Federal Regulations
CO Carbon Monoxide
CTG Control Techniques Guidelines
DOI Department of the Interior
DOT Department of Transportation
EE/RE Energy Efficiency and Renewable Energy
EMFAC EMission FACtors Model
EPA Environmental Protection Agency
FLM Federal Land Managers
FR Federal Register
ICR Information Collection Request
I/M Inspection and Maintenance
IPT Interprecursor Trade or Interprecursor Trading
MCD Milestone Compliance Demonstration
MOVES Motor Vehicle Emissions Simulator
NAAQS National Ambient Air Quality Standards
NNSR Nonattainment New Source Review
NO_X Nitrogen Oxides
O_3 Ozone
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OTR Ozone Transport Region
PAMS Photochemical Assessment Monitoring Station
$PM_{2.5}$ Fine Particulate Matter
ppm Parts per Million
PRA Paperwork Reduction Act
PTE Potential to Emit
PUC Public Utility Commission
RACM Reasonably Available Control Measures
RACT Reasonably Available Control Technology
RFP Reasonable Further Progress
ROP Rate of Progress
RPS Renewable Portfolio Standard
SIP State Implementation Plan
SO_2 Sulfur Dioxide
tpy Tons per Year
TAR Tribal Authority Rule
TAS Treatment as a State
TGD Technical Guidance Document
TIP Tribal Implementation Plan
USB U.S. Background
U.S.C. United States Code
USDA U.S. Department of Agriculture
VOC Volatile Organic Compounds

B. Does this action apply to me?

Entities potentially affected directly by this final rule include state, local and tribal governments and air pollution control agencies ("air agencies") responsible for attainment and maintenance of the NAAQS. Entities potentially affected indirectly by this final rule as regulated sources include owners and operators of sources of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) that contribute to ground-level ozone formation.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *http://www.epa.gov/ozone-pollution*.

D. How is this notice organized?

The information presented in this notice is organized as follows:

II. Background and Summary of Final Rule

On October 1, 2015, the EPA promulgated revisions to the primary and secondary NAAQS for ozone, setting them at a level of 0.070 parts per million (ppm) [1] (*see* 80 FR 65292). Since the 2015 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as "the 2015 ozone NAAQS" or "the 2015 ozone standards." The 2015 ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008.

Following revisions to a NAAQS, the EPA and air agencies work together to implement the revised NAAQS. To assist air agencies, the EPA considers the extent to which existing EPA regulations and guidance are sufficient to implement the standard and whether any revisions or updates to those regulations and guidance would be helpful or appropriate in facilitating the implementation of the revised standard by air agencies and regulated entities. The Clean Air Act (CAA or Act) does not require that the EPA promulgate new or revised implementing regulations or guidance when a NAAQS is revised. However, in certain circumstances, the EPA has determined that revisions to implementing regulations are necessary to ensure that the CAA's requirements are clear for both air agencies and regulated entities. Air agencies are required to submit SIPs, as provided in the CAA and in EPA regulations. It is important to note that the existing EPA regulations in title 40 part 51 of the Code of Federal Regulations (CFR) applicable to SIPs generally and to particular pollutants (*e.g.*, ozone and its precursors) continue to apply even if these regulations are not updated.

The 1990 CAA Amendments contained ozone NAAQS implementation provisions that were specific to the then-current 1-hour ozone NAAQS, including regulatory provisions and SIP-related deadlines that do not directly apply to the revised 8-hour ozone NAAQS. To fill the resulting statutory gaps and provide other needed regulatory guidance, the EPA has promulgated several iterations of implementing regulations for the 8-hour ozone NAAQS that was issued by the EPA in 1997 and revised in 2008. For purposes of the 2015 ozone NAAQS, the EPA is generally applying the overall framework and policy approach of the implementation provisions associated with the previous 8-hour NAAQS, with the exception of elements addressed in the adverse portions of the D.C. Circuit's February 2018 decision in *South Coast Air Quality Management District* v. *EPA* (discussed later in this preamble), to provide for regulatory certainty and consistent implementation across time. This overall regulatory framework and policy approach has been developed over time with input from numerous stakeholders, including the states responsible for fulfilling the CAA's NAAQS implementation requirements under the CAA's system of cooperative federalism. The framework and policy approach have also been significantly informed by numerous court opinions rendered on specific regulatory provisions, where the EPA's initial interpretation of the CAA's ozone implementation requirements was vacated or otherwise restricted.

An initial step in implementing a revised NAAQS is the process in which states and some tribes recommend area designations (*i.e.*, as nonattainment, attainment or unclassifiable) to the EPA. The EPA then evaluates air quality data and other factors prior to making our proposed and final determinations regarding area designations. Areas designated as nonattainment for a revised ozone NAAQS are classified (*i.e.*, as Marginal, Moderate, Serious, Severe or Extreme) according to the severity of the nonattainment at the time of designation (as determined based on the area's "design value" (DV)).[2] The EPA has already finalized in a separate action the air quality thresholds corresponding with, and attainment dates for, each level of nonattainment area classification for the 2015 ozone NAAQS (*see* 83 FR 10376; March 9, 2018), which were then applied when the EPA promulgated final nonattainment area designations for that standard (*see* 83 FR 25766; June 4, 2018 (for most of the U.S.); 83 FR 35136; July 25, 2018 (for the San Antonio, Texas area)).

On November 17, 2016, the EPA solicited public comment on proposed revisions to the ozone NAAQS implementing regulations as they apply to the 2015 ozone NAAQS, including the nonattainment area classification scheme and SIP requirements, in a notice of proposed rulemaking (NPRM) (81 FR 81276). The public comment period for the NPRM ran from November 17, 2016, to February 13, 2017. The EPA received a total of 79 comment submissions on the NPRM. As explained previously, those comments relating to the nonattainment area classifications scheme were addressed in a separate action in March 2018 finalizing those classifications (*see generally* 83 FR 10376). The preamble to this final rule discusses significant comments received on the SIP requirements portion of the NPRM and

[1] Annual fourth highest daily maximum 8-hour average concentration, averaged over 3 years. For a detailed explanation of the calculation of the 3-year 8-hour average, *see* 40 CFR part 50, Appendix P.

[2] The air quality DV for the 8-hour ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average concentration for a specific monitor. When an area has multiple monitors, the area's DV is determined by the individual monitor with the highest DV.

how those comments were considered by the EPA in general terms. The accompanying Response to Comments document provides more detailed responses to the comments received. The public comments received on the NPRM and the EPA's Response to Comments document are posted in the docket at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OAR–2016–0202).

We are finalizing submittal deadlines and specific CAA requirements for the content of nonattainment area and OTR SIPs for the 2015 ozone NAAQS in this rule. As a general matter, this final rule follows the same basic principles and approach that the EPA applied to interpret the CAA's part D ozone nonattainment area requirements in developing the implementation rule for the 2008 ozone NAAQS.[3]

In the NPRM, the EPA also proposed and sought comment on two alternative approaches for revoking the 2008 ozone NAAQS for all purposes and, where applicable, establishing anti-backsliding requirements. The first approach to revoking the 2008 ozone NAAQS would parallel the approach used in revoking the 1-hour and 1997 ozone NAAQS. Under this first approach, the 2008 ozone NAAQS would be revoked at essentially the same time for all areas of the U.S., and a set of protective anti-backsliding requirements would be promulgated for all areas that are designated nonattainment for the 2008 and 2015 NAAQS as of 1 year after the effective date of designation for the 2015 ozone NAAQS. Under the second approach, the 2008 ozone NAAQS would not be revoked in any area designated nonattainment for the 2008 ozone NAAQS until that area is redesignated to attainment with an approved CAA section 175A 10-year maintenance plan; the 2008 ozone NAAQS would in no case be revoked earlier than 1 year after the effective date of designation for the 2015 ozone NAAQS. The 2008 ozone NAAQS would be revoked in all other areas 1 year after the effective date of designation for the 2015 ozone NAAQS.

The EPA's approach to revoking the 1997 ozone NAAQS was challenged in *South Coast Air Quality Management District* v. *EPA*, 882 F.3d 1138 (D.C. Cir. 2018) (hereinafter referred to as *South Coast II*). On February 16, 2018, the D.C. Circuit issued a partially adverse decision in that case. The EPA is currently assessing the implications of the decision on those aspects of the proposal regarding revocation of the 2008 ozone NAAQS. Thus, the EPA is not acting today on any of the proposed revocation options of the 2008 ozone NAAQS or any proposed anti-backsliding requirements. The EPA intends to address any revocation of the 2008 ozone NAAQS, and any potential anti-backsliding requirements in a separate future rulemaking.

Regarding the format of this preamble, on topics where we made a specific proposal, we include detailed information about what we proposed, what we are finalizing and our rationale, as well as responses to significant comments. As stated previously, we are retaining without significant revision the majority of existing implementing regulations associated with the 2008 ozone NAAQS for purposes of implementing the 2015 ozone NAAQS, as discussed in Section III of this preamble. We discuss those aspects of existing implementing regulations that we are revising for purposes of implementing the 2015 ozone NAAQS in Section IV of this preamble. Section V of this preamble addresses several topics, relevant to implementing of the 2015 ozone NAAQS, on which we solicited public comment in the November 2016 proposal, but for which we are not promulgating any specific revisions to the agency's implementing regulations at this time.

III. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained Without Significant Revision

For purposes of implementing the 2015 ozone NAAQS, we are retaining without significant revision the majority of regulatory provisions previously promulgated for purposes of implementing the 2008 ozone NAAQS. The classification and SIP requirement provisions for the 2008 standards were codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards will now be codified in subpart CC of part 51.

A. Submission Deadlines and Form for Nonattainment Area and OTR SIP Elements Due Under CAA Sections 182 and 184

1. Deadlines for Submitting Nonattainment Area and OTR SIP Elements

a. Summary of Proposal. The EPA proposed to retain our existing approach to establishing deadlines for submitting ozone nonattainment area SIP elements. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's current approach and rationale for SIP element submittal deadlines (80 FR 12265; March 6, 2015).

b. Final Rule. The EPA is adopting the proposed approach for establishing deadlines for submitting nonattainment area SIP elements under CAA section 182 for the 2015 ozone NAAQS, based on the approach and rationale articulated in the final 2008 Ozone SIP Requirements Rule. Section 182 of the CAA requires states with ozone nonattainment areas to submit various SIP elements within specified time periods after November 15, 1990 (the date of enactment of the 1990 CAA Amendments). For the 2015 ozone NAAQS, the EPA is retaining the approach adopted for the 2008 ozone NAAQS: The SIP elements listed will generally be due, with the limited exceptions discussed later, according to the timeframes provided for those SIP elements in CAA section 182, but measured from the effective date of nonattainment designation rather than from November 15, 1990.

Accordingly, states with areas designated nonattainment have: 2 years from the effective date of a nonattainment designation to submit SIP revisions addressing emissions inventories (required by CAA section 182(a)(1)), RACT (CAA section 182(b)(2)) and emissions statement regulations[4] (CAA section 182(a)(3)(B)); 3 years from the effective date of nonattainment designation to submit SIP revisions addressing 15 percent rate of progress (ROP) plans (CAA section 182(b)(1)) and Moderate area attainment demonstrations (CAA section 182(b)(1)); and 4 years from the effective date of nonattainment designation to submit SIP revisions addressing 3 percent per year[5] RFP plans (CAA section 182(c)(2)) and attainment demonstrations for Serious and higher classified areas (CAA section 182(c)(2)), where applicable. If an area is subject to vehicle inspection and maintenance (I/M) program requirements based on its classification, the SIP revision due date for the I/M requirements is already codified in 40 CFR 51.372(b)(2) and is aligned with the due date for the attainment demonstration SIP for the area (*i.e.*, either 3 or 4 years from the effective date of nonattainment designation, depending on the area's

[3] *See* "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (80 FR 12264; March 6, 2015), hereafter referred to as the 2008 Ozone NAAQS SIP Requirements Rule.

[4] *See* Section IV.E of this preamble for additional information on emissions statements.

[5] The 3 percent per year RFP plans are typically submitted in 3-year increments, *i.e.*, as 9 percent RFP plans that produce average reductions of 3 percent of baseline emissions per year.

classification: 3 years for Moderate areas, 4 years for Serious and higher).

SIP revisions addressing CAA section 185 penalty fee programs in areas initially classified Severe or Extreme are due 10 years from the effective date of nonattainment designation. The 10-year submittal deadline is consistent with section 182(d)(3) of the CAA, which provided slightly more than 10 years for submission of the fee program SIP revision for areas designated as nonattainment and classified as Severe or Extreme by operation of law in 1990 for the 1-hour ozone NAAQS.

SIP submissions addressing nonattainment new source review (NNSR) permit program requirements applicable to the 2015 ozone NAAQS are due 3 years from the effective date of nonattainment designation (*see* new 40 CFR 51.1314). This is consistent with the approach articulated in the 2008 Ozone NAAQS SIP Requirements Rule. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or plan revisions "no later than 3 years from the date of the nonattainment designation."

We note also that the EPA's past implementing regulations for revised ozone NAAQS have required OTR states to submit RACT SIP revisions based on the timeframe provided in CAA section 184 as measured from the effective date of designations made pursuant to those revised NAAQS, rather than from November 15, 1990. This requirement was first codified in 40 CFR 51.916 for the 1997 ozone NAAQS, and later codified for the 2008 ozone NAAQS in 40 CFR 51.1116. Under those provisions, states in the OTR are required to submit SIP revisions addressing the RACT requirements of CAA section 184 no later than 2 years after the effective date of designations for nonattainment areas for the revised ozone NAAQS. The EPA is adopting these same general requirements for the 2015 ozone NAAQS (*see* Section III.J of this preamble).

c. Comments and Responses.

Comment: The only adverse comment the EPA received regarding the proposed submittal dates for SIP elements for the 2015 ozone NAAQS specifically pertained to the proposed 3-year schedule for submitting new or revised SIP elements addressing NNSR program requirements. The commenter, objecting to the proposed 3-year NNSR SIP due date, claimed that such a timeframe is contrary to CAA section 182(a)(2)(C), which, based on the commenter's interpretation, affords 2 years for nonattainment areas to submit their NNSR permit requirements SIP. The EPA received support for the proposed 3-year NNSR SIP revision deadline from two air agency commenters.

Response: The EPA disagrees with the commenter's argument that a 2-year maximum deadline for NNSR plans for the 2015 ozone NAAQS is required by the CAA. The commenter argues that a 2-year deadline is mandated under provisions contained in CAA section 182. As explained in the 2008 Ozone NAAQS SIP Requirements Rule (*see* 80 FR 12267, March 6, 2015), and the 2015 Ozone NAAQS Implementation Rule Proposal (*see* 80 FR 81278, November 17, 2016), the EPA recognized that CAA section 182(a)(2)(C)(i), under the heading "Corrections to the State implementation plans—Permit programs," contains a requirement for states to submit SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within 2 years after the date of enactment of the 1990 CAA Amendments. The EPA continues to support the interpretation of the statute that the submission of NNSR SIPs due on November 15, 1992, *i.e.*, the date 2 years after enactment of the 1990 CAA Amendments, fulfilled this statutory "corrections" requirement. The plan submittal schedules set forth in the 1990 CAA Amendments at section 182(a)(2) were applicable to the then existing 1-hour ozone NAAQS, and Congress intended them to address SIP-related transition issues unique to the transition from provisions "as in effect immediately before November 15, 1990" to provisions in the newly enacted 1990 CAA Amendments.

The CAA, in the generally applicable subpart 1 provisions of Part D of Title I, specifically section 172(b), provides a submittal schedule for plan revisions following the EPA's promulgation of "the designation of an area as nonattainment with respect to a national ambient air quality standard. . . ." *See* 42 U.S.C. 7502(b). At the time of the 1990 CAA Amendments, designations for the 1-hour ozone NAAQS were already in existence for all areas of the country—including nonattainment areas. The 1990 CAA Amendments under Title I Part D Subpart 2 added increased programmatic controls and a tiered classification structure on top of the existing ozone nonattainment designations, imposing still more SIP submission requirements on the higher classified areas. Given the existing NNSR programs developed under prior statutory authority, it is reasonable to believe that Congress thought that the initial NNSR SIP corrections required under the newly created section 182(a)(2)(C) could be developed and submitted to the EPA quickly. The EPA continues to support the interpretation of the statute that the submission of "corrections to the SIP," including NNSR SIPs, due on November 15, 1992, fulfilled the statutory requirement addressing the SIP revisions associated with the 1-hour ozone standard. Hence, the EPA continues to support the interpretation that the general NAAQS implementation provisions in CAA subpart 1 at section 172(b) govern when the EPA establishes a deadline for the submittal of NNSR SIP revisions that are triggered by ozone NAAQS revisions occurring after November 15, 1990.

2. Form and Content of Nonattainment and OTR SIP Element Submissions Required Under a Revised NAAQS

a. Summary of Proposal. The EPA proposed to retain our existing CAA interpretation that air agencies are required to submit all nonattainment SIP elements applicable for an area's classification following revision of the NAAQS. The EPA also took comment on an option for air agencies to submit a certification statement for previously approved SIP elements. When submitting SIP elements, air agencies may certify that an existing regulation is adequate to meet certain nonattainment area planning requirements for a revised ozone NAAQS, in lieu of submitting a new revised regulation.

b. Final Rule. The EPA is finalizing the proposed requirements. We continue to interpret the general SIP requirements of subpart 1 of part D of Title I and the specific nonattainment area planning requirements of CAA section 182 to require air agencies to submit a SIP element to meet each nonattainment area planning requirement for the 2015 ozone NAAQS. Many air agencies already have regulations in place to address certain nonattainment area planning requirements due to nonattainment designations for a prior ozone NAAQS. Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by the revised ozone NAAQS.[6] For example, a state may have an emissions statement regulation (per CAA section 182(a)(3)(B)) that has been previously approved by the EPA for a prior ozone NAAQS that covers all the state's nonattainment areas and relevant classes and categories of sources for the 2015 ozone NAAQS, and that is likely to be sufficient for purposes of meeting

[6] This review should include determining whether the nonattainment area boundary for the current ozone NAAQS is consistent with the boundary for the previous standards.

the emissions statement requirement for the 2015 ozone NAAQS. Where an air agency determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements of CAA section 182 (or OTR RACT requirements of CAA section 184) for a revised ozone NAAQS, that air agency's SIP revision may provide a written statement certifying that determination in lieu of submitting new revised regulations. The EPA has acted on similar certifications in the past. *See e.g.*, 83 FR 26221 (June 6, 2018) (explaining that the EPA is approving Pennsylvania's certification that the state's previously approved emissions statement regulation meets the requirements of CAA section 182(a)(3)(B) for the 2008 ozone standards). Other previously approved nonattainment SIP elements that may be sufficient for purposes of an area that has been designated nonattainment for a revised ozone NAAQS might include (but are not necessarily limited to): NNSR, vehicle I/M programs and clean fuels requirement for boilers.

An air agency choosing to provide a written certification in lieu of submitting a new or revised regulation must provide the certification to the EPA qualifying as a SIP revision in accordance with CAA section 110 and 40 CFR 51.102, 103 and part 51 Appendix V. An air agency should identify the related applicable requirements and explain how each is met for the revised ozone NAAQS by the regulation previously approved for a prior ozone NAAQS. The purpose of the statement is to demonstrate compliance with the nonattainment area planning requirements for the new NAAQS. These written statements must be treated in the same manner as any other SIP submission and must be provided to the EPA in accordance with applicable SIP submission requirements and deadlines.

In cases where a previously approved regulation is modified for any reason, or where no regulation exists, air agencies must provide the new or modified regulation as a SIP submission. This would include new or modified RACT provisions for states with nonattainment areas and states in an OTR resulting from a new review of major source emission controls.

c. Comments and Responses.

Comment: Several commenters objected to the EPA's expectation that states certify the adequacy of previously approved SIP elements for a revised NAAQS with written statements, through the same process as other SIP revisions. They argue the certification process is redundant and therefore a waste of resources because the EPA already has several processes to ensure that states meet CAA section 110 planning obligations including infrastructure SIPs. Two commenters supported the EPA's option for SIP certification statements, citing its benefits in streamlining the SIP development process.

Response: The EPA disagrees with commenters that SIP certification statements triggered by a NAAQS revision are redundant and already accomplished through other SIP processes, including infrastructure SIPs. As noted previously, we continue to interpret the general SIP requirements of CAA section 110 and specific nonattainment planning requirements of CAA section 182 to require an air agency to provide a SIP submission to meet each nonattainment area planning requirement for a revised ozone NAAQS. To the extent that commenters suggest the EPA should adopt a general presumption of adequacy for previously approved SIP elements, we disagree. We note in particular that the infrastructure SIP submission triggered by a NAAQS revision provides the public and the EPA an opportunity to review the basic structure of a state's air quality management program and is not intended—nor can it be presumed—to address the adequacy of individual nonattainment SIP elements for purposes of the revised NAAQS.

The submission of individual nonattainment SIP elements for purposes of the revised NAAQS provides the public and the EPA an opportunity to review and comment upon each element of a nonattainment SIP. If the air agency reviews an existing SIP element and concludes it does not need to be revised in light of the new NAAQS, submission of a certification SIP allows the public to review the air agency's assessment and provide comment on any changes they may think necessary. The EPA then also has an opportunity to review the air agency's assessment and ensure that it is consistent with CAA requirements in relation to the revised 2015 ozone NAAQS.

As noted by other commenters, the certification statement option is intended to streamline the SIP submission process, providing air agencies with the flexibility to address multiple SIP elements in a single certification statement, and combine the SIP certification action with other actions subject to public notice and comment. The EPA does not believe that developing and submitting certification SIP elements will be a significant and unnecessary drain on state resources.

B. Redesignation to Nonattainment Following Initial Designations

1. Summary of Proposal

The EPA proposed to retain our existing requirements concerning SIP-related deadlines for areas initially designated attainment for a current ozone NAAQS and subsequently redesignated to nonattainment for the same standards. These requirements are codified for the 2008 ozone NAAQS at 40 CFR 51.1106.

2. Final Rule

The EPA is finalizing the proposed requirements. The newly adopted provisions, codified at 40 CFR 51.1306, generally allow an extension of any absolute, fixed date applicable to SIP requirements under part 51—excluding attainment dates—equal to the length of time between the effective date of the initial designation for the NAAQS and the effective date of the redesignation, unless otherwise provided in the implementation provisions for the 2015 ozone NAAQS.[7] The maximum attainment date for a redesignated area would be based on the area's classification.

3. Comments and Responses

The EPA received no adverse comments on the proposed requirements.

C. Determining Eligibility for 1-Year Attainment Date Extensions for the 2015 Ozone NAAQS Under CAA Section 181(a)(5)

1. Summary of Proposal

The EPA proposed to retain our existing approach for eligibility criteria for 1-year attainment date extensions under CAA section 181(a)(5). These criteria are codified for the 1997 ozone NAAQS in 40 CFR 51.907 and for the 2008 ozone NAAQS in 40 CFR 51.1107, and we proposed to retain the same approach for purposes of the 2015 ozone NAAQS.

2. Final Rule

The EPA is finalizing the proposed approach. Under the newly adopted provisions, codified at 40 CFR 51.1307, an area that fails to attain a specific ozone NAAQS by its attainment date

[7] For example, the adopted RACT provisions at 40 CFR 51.1312(a)(3)(ii) for reclassified nonattainment areas (which would include areas redesignated to nonattainment) require that RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier (*see* Section IV.B of this preamble).

would be eligible for the first 1-year extension if, for the attainment year, the area's fourth highest daily maximum 8-hour average is at or below the level of the standards. The area would be eligible for the second 1-year extension if the area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is at or below the level of the standards. For the second 1-year extension, the area's fourth highest daily maximum 8-hour average for each year (the attainment year and the first extension year) must be determined using the monitor which, for that year, has the fourth highest daily maximum 8-hour average of all the monitors that represent that area (*i.e.*, the area's fourth highest daily maximum 8-hour average for each year could be derived from a different monitor).

In addition to demonstrating that an area meets these general eligibility criteria, an air agency must demonstrate that it has complied with all requirements and commitments pertaining to the area in the applicable SIP, per CAA section 181(a)(5)(A). Given the state and federal partnership in implementing the CAA, it is reasonable for the EPA to interpret CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of our state counterparts, and the EPA has long interpreted the provision to be satisfied by such statements.[8] In practice, in conjunction with a request for an extension, a state air agency's Executive Officer, or other senior individual with equivalent responsibilities, signs and affirms that the state is complying with its applicable federally approved SIP.

3. Comments and Responses

Comment: The EPA received general support for retaining the current 1-year attainment date extension approach. One commenter requested that either the EPA codify clear and specific instructions on the criteria that must be met, beyond the monitoring requirements in proposed section 51.1307, or that the EPA update guidance for ozone to correspond with the carbon monoxide (CO) attainment date extension guidance[9] since the EPA ties consideration of an attainment date extension for CO to a state's "substantial" efforts to reduce emissions.

Response: We disagree with the commenter that the EPA should codify instructions or develop separate guidance for granting attainment date extensions under an ozone NAAQS. CAA section 181(a)(5)(A) requires a state to have complied with all applicable SIP requirements and commitments to qualify for an attainment date extension. As discussed previously, the EPA has long interpreted CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of our state counterparts that a state has complied with all applicable ozone SIP requirements and commitments to qualify for an attainment date extension. In practice, we have found this approach for ozone NAAQS implementation to be reasonable and sufficient, and do not intend to develop separate 1-year attainment deadline extension guidance for the ozone NAAQS at this time.

D. Modeling and Attainment Demonstration Requirements

1. Summary of Proposal

The EPA proposed to retain our existing modeling and attainment demonstration requirements, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1108, and to establish criteria and due dates for attainment demonstrations and implementation of control measures for the 2015 ozone NAAQS. Due dates for attainment demonstrations are established relative to the effective date of area designations, and all control measures in the attainment demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding specific RACT and/or RACM implementation deadline requirements. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of attainment demonstration elements and related modeling protocols (80 FR 12268; March 6, 2015). The EPA's current procedures for modeling are well developed and described in the EPA's "Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze" (November 2018).[10]

2. Final Rule

The EPA is finalizing modeling requirements as outlined in the proposal, and adopted at 40 CFR 51.1308. The EPA continues to believe the modeling requirements established in the final 2008 Ozone NAAQS SIP Requirements Rule are reasonable, primarily because photochemical modeling is generally available and reasonable to employ. However, this requirement also explicitly allows for another analytical method, determined by the Administrator to be at least as effective as photochemical modeling, to be substituted for or used to supplement a photochemical modeling-based assessment of an emissions control strategy. Any alternative analysis should be based on technically credible methods that allows for the timely submittal of the attainment demonstration. States should review the EPA modeling guidance[11] and consult their appropriate EPA Regional office before proceeding with alternative analyses. Under CAA section 182(a), states are not required to submit an attainment demonstration SIP for Marginal areas. The EPA offers assistance to states as they consider the most appropriate course of action for Marginal areas that may be at risk of failing to meet the NAAQS within the applicable 3-year timeframe. If necessary, states can choose to adopt additional controls for such areas or they can request a voluntary reclassification to a higher classification category. The EPA believes that voluntary reclassification for areas that are not likely to attain by their attainment date may facilitate quicker attainment, including through the development of the attainment plans required of Moderate and higher classified areas.

3. Comments and Responses

Comment: One commenter stated that the EPA should finalize our 2014 draft modeling guidance. Another commenter stated that the use of photochemical grid modeling (or equivalent) for attainment demonstrations should be left to a state's discretion.

Response: The EPA acknowledges the need to update modeling guidance and has recently released an updated (November 2018) version, as described previously.

[8] *See* "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, U.S. EPA, February 3, 1994.

[9] The CO guidance referenced is contained in the Sally Shaver memo, "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas" (10/23/95), available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19951023_shaver_attainment_extension_co_naa.pdf.*

[10] Modeling guidance, tools and supporting documents for SIP attainment demonstration are available at: *http://www3.epa.gov/scram001/guidance_sip.htm.*

[11] The modeling guidance can be found in the EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze," available at: *https://www3.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

In regard to the use of photochemical grid modeling, the EPA is retaining the same modeling and attainment demonstration requirements as established in the final 2008 Ozone NAAQS SIP Requirements Rule. CAA section 182(c)(2)(A) contains specific requirements for states to use photochemical modeling or another analytical method determined to be at least as effective in their SIPs for Serious and higher classified nonattainment areas. Since photochemical modeling is the most scientifically rigorous technique to determine NO_X and/or VOC emissions reductions needed to show attainment of the NAAQS and is readily available, we are requiring photochemical modeling (or another analytical method determined to be at least as effective) for all attainment demonstrations (including Moderate areas). We continue to believe that photochemical modeling is the most technically credible method of estimating future year ozone concentrations based on projected VOC and NO_X precursor emissions.

E. Requirements for RFP

1. Summary of Proposal

The EPA proposed in general to retain our existing approach for RFP requirements and to add new regulatory provisions codifying statutory requirements for RFP milestone compliance demonstrations (MCDs) (*see* Section IV.A of this preamble). The EPA also sought comment on requiring states to use the year of an area's designation as nonattainment as the baseline year for the emissions inventory for the RFP requirement.

The existing RFP requirements for the 2008 ozone NAAQS are codified in 40 CFR 51.1110 and are organized by the following major subjects: Submission deadline for SIP revisions; RFP requirements for affected areas;[12] creditability of emission control measures; creditability of out-of-area emissions reductions; calculation of non-creditable emissions reductions; and baseline emissions inventories for RFP plans. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for how air agencies can provide for RFP in their nonattainment SIPs (80 FR 12271; March 6, 2015).

In general terms, ozone nonattainment areas must achieve RFP toward attainment of the ozone NAAQS, as established in the RFP provisions of subparts 1 and 2 of part D of the CAA. Section 172(c)(2) of subpart 1 requires that nonattainment SIPs must provide for RFP, defined in CAA section 171(1) as "such annual incremental reductions in emissions" as required by CAA part D or as required by the Administrator for ensuring attainment of the NAAQS. Subpart 2 establishes specific percent reduction targets for ozone nonattainment areas. For Moderate and higher classified areas, CAA section 182(b)(1) requires a 15 percent reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990 (this RFP requirement is also referred to as ROP). The 15 percent ROP requirement must be met by the end of the 6-year period regardless of when the nonattainment area attains the NAAQS. For an area that already has an approved SIP providing for the 15 percent ROP requirement for VOC under either the 1-hour ozone NAAQS or a prior 8-hour ozone NAAQS, the EPA proposed that the area would not need to meet that requirement again. Instead, such areas would be treated like areas covered under CAA section 172(c)(2) if they are classified as Moderate for the 2015 ozone NAAQS. The EPA proposed to retain our existing interpretation of CAA section 172(c)(2) to require such areas to obtain 15 percent reductions in ozone precursor emissions over the first 6 years after the baseline year. For areas classified Serious and higher, the EPA proposed to retain our existing interpretation of CAA section 182(c)(2)(B) to require such areas to obtain 18 percent ozone precursor emission reductions in that 6-year period.[13] For areas classified Serious and higher, CAA section 182(c)(2)(B) requires an additional 3 percent per year reduction from baseline VOC emissions, averaged over consecutive 3-year periods, beginning 6 years after November 15, 1990, and applying each year until the attainment date. CAA section 182(c)(2)(B) also allows NO_X reductions to be substituted for VOC reductions under certain conditions to meet the 3 percent per year RFP requirement.

The EPA proposed that the default baseline year for RFP would be the calendar year for the most recently available triennial emissions inventory at the time ROP/RFP plans are developed (*e.g.*, 2017 for initial designations effective in 2018). We further proposed that states may use an alternative year (*i.e.*, a year other than 2017) between the year of the revised NAAQS issuance (2015) and the year in which nonattainment designation is effective. Consistent with our approach for the 2008 ozone NAAQS, we proposed that all states associated with a multi-state nonattainment area must consult and agree on a single RFP baseline year for the area. The EPA also invited comment on an alternative approach of requiring that states use the year of the effective date of an area's designation as the baseline year for the emissions inventory for the RFP requirements.

2. Final Rule

The EPA is finalizing most aspects of our proposals for implementing the CAA's RFP provisions for purposes of the 2015 ozone NAAQS, as adopted at 40 CFR 51.1310. In general, the EPA is following essentially the same interpretation of CAA subpart 2 requirements for RFP as was applied to areas for the 2008 and 1997 8-hour ozone standards, with exceptions noted in this section. Areas classified Moderate for the 2015 ozone NAAQS that had SIPs previously approved to meet the ROP requirements for the 1-hour, 1997 8-hour or 2008 8-hour ozone NAAQS would be treated like areas covered under CAA section 172(c)(2), and would need to meet the 3 percent per year RFP requirements under CAA section 182(c)(2)(B) if they are classified Serious or higher for the 2015 standards. For the purposes of the 2015 ozone NAAQS, the EPA continues to interpret CAA section 172(c)(2) as requiring Moderate areas with an approved SIP under the 1-hour ozone NAAQS or prior 8-hour ozone NAAQS to achieve 15 percent ozone precursor (NO_X and/or VOC) emission reductions over the first 6 years after the RFP baseline year for the 2015 ozone NAAQS. For areas classified Serious and higher, the EPA continues to interpret CAA section 182(c)(2)(B) to require such areas to obtain 18 percent ozone precursor emission reductions in that 6-year period. This interpretation was recently upheld in a challenge to the 2008 Ozone NAAQS SIP Requirements Rule in *South Coast II*, 882 F.3d at 1153. The EPA also continues to interpret CAA

[12] 40 CFR 51.1110(a)(2)–(4) establish three separate sets of RFP requirements for: (1) Areas with an approved 1-hour or 1997 ozone NAAQS 15 percent VOC ROP plan; (2) areas for which an approved 15 percent VOC ROP plan for the 1-hour or 1997 ozone NAAQS exists for only a portion of the area; and (3) areas without an approved 1-hour or 1997 ozone NAAQS 15 percent VOC ROP plan.

[13] Similar interpretations were made for the 1997 ozone NAAQS in the Phase 2 Ozone Implementation Rule (70 FR 71615, November 29, 2005), which were upheld in *NRDC* v. *EPA*, 571 F.3d 1245 (D.C. Cir. 2009), and for the 2008 ozone NAAQS in the 2008 Ozone NAAQS SIP Requirements Rule (80 FR 12271, March 6, 2015), which were upheld in *South Coast II*, 882 F.3d 1138 (D.C. Cir. 2018).

section 182(c)(2)(B) for the 2015 ozone NAAQS as requiring an additional 3 percent per year reduction from baseline emissions, averaged over consecutive 3-year periods, beginning 6 years after the RFP baseline year, and applying each year until the attainment date.

For the RFP baseline year for the 2015 ozone NAAQS, we are specifying that the baseline year shall be the calendar year for the most recently available triennial emissions inventory preceding the year of the area's effective date of designation as a nonattainment area. This approach was recently upheld by the D.C. Circuit in *South Coast II*. Alternatively, states may choose to use the year that corresponds with the year of the effective date of an area's nonattainment designation for the RFP baseline year.

For purposes of the 2008 ozone NAAQS, the EPA selected 2011 as a baseline year because it is tied to the 3-year statutory cycle for emissions inventories, and preceded the year in which nonattainment area designations for the 2008 ozone NAAQS were effective (*i.e.*, 2012). The D.C. Circuit in *South Coast II* upheld this approach as reasonable, because the chosen baseline year was tied to the triennial emissions inventory states must prepare. *South Coast II*, 882 F.3d at 1152. Further, we note that the EPA has historically interpreted RFP "baseline emissions" (CAA section 182(b)(1)(B)) as corresponding with the initial emissions inventory in CAA section 182(a) (*see, e.g.*, 80 FR 12290; March 6, 2015).[14] For an ozone NAAQS revision occurring after the CAA was amended in 1990, we interpret the periodic triennial inventory required by CAA section 182(a)(3) as effectively supplanting the initial emissions inventory required by CAA section 182(a)(1), because the revised periodic inventory must meet the same requirements as the initial emissions inventory. We therefore believe it is a reasonable interpretation of the CAA that RFP baseline year emissions may correspond with the calendar year and contents of the triennial inventory required by CAA section 182(a)(3). We are finalizing our approach that states shall use an RFP baseline year for the 2015 ozone NAAQS that corresponds with the calendar year for the most recent triennial emissions inventory preceding the year of the area's effective date of nonattainment designation. For example, states with areas designated nonattainment in 2018 would use 2017 as the RFP baseline year, which would be the year of the most recent triennial emissions inventory.

For purposes of the 2015 ozone NAAQS, states may also use an alternative RFP baseline year that corresponds with the year of the effective date of an area's designation. This adopted approach for the 2015 ozone NAAQS revises the approach provided in the 2008 Ozone NAAQS SIP Requirements Rule, which allowed the state to select an alternative RFP baseline year between the year of the revised NAAQS issuance (*i.e.*, 2008) and the year in which nonattainment designations were effective (*i.e.*, 2012), so long as the state could explain why the alternative year was appropriate. The EPA's creation of the state-selected alternative RFP baseline year option for the 2008 Ozone NAAQS SIP Requirements Rule was rejected by the court in *South Coast II*, because the court found that the EPA failed to provide a statutory justification for why alternative baselines were appropriate. *South Coast II*, 882 F.3d at 1153. As noted previously, the EPA sought comment on an alternative approach that would have *required* states to use the year of the effective date of an area's designation (designation year) as the baseline year for the RFP emissions inventory instead of the triennial emissions inventory year.

As explained earlier, for purposes of the 2015 ozone NAAQS, we are specifying that the baseline year shall be the calendar year for the most recently available triennial emissions inventory preceding the year of the area's effective date of designation as a nonattainment area, but also allowing an alternative approach that provides states the option to use an area's designation year as the baseline year for RFP. This alternative option is grounded in our interpretation of the RFP requirement in CAA section 182(b)(1)(B), which defines "baseline emissions" in terms of total VOC and NO_X emissions in the area "during the calendar year 1990." There is clear ambiguity in the statutory language at issue, since we do not believe Congress intended 1990 to be the baseline year for RFP requirements for all future ozone NAAQS. Therefore, the EPA must develop a reasonable interpretation of the baseline year provisions at issue. Note that section 93.119(e)(4) of the EPA's transportation conformity rule requires that for any NAAQS promulgated after 1997 the baseline year is the "most recent year for which the EPA's Air Emissions Reporting Requirements (AERR) (40 CFR part 51, subpart A) requires submission of on-road mobile source emissions inventories as of the effective date of designations." For nonattainment areas for the 2015 ozone NAAQS, 2017 is the baseline year for transportation conformity purposes.

The calendar year 1990 is tied to the November 15, 1990, date of passage of the 1990 CAA Amendments, which "is the date on which Congress specified that the initial designations/classifications . . . under the 1990 amendments would take effect." *NRDC v. EPA*, 777 F.3d 456 (D.C. Cir. 2014) (citing 42 U.S.C. 7407(d)(1)(C), 7511(a)(1)). Thus, for the 1-hour standard, the RFP baseline year was "calendar year 1990," which was *both* the year of the initial emissions inventory required by CAA section 182(a)(1) *and* the year of designations. However, for future promulgations and revisions of NAAQS, the year of designations and the year of the most recent triennial emissions inventory may not coincide—and for the 2015 ozone NAAQS, they do not. Where they do not coincide, no single year can be selected that presents both the attributes that 1990 did in the context of the Amendments and the subsequent implementation process. Accordingly, we believe that in the context of implementing a NAAQS for which these 2 years do not coincide, the textual reference in the RFP requirement's "baseline emissions" provision reference to the "calendar year 1990" (CAA section 182(a)(1)) can be reasonably read to refer to that year either as an area's year of initial designation or as the year of the relevant emissions inventory. We therefore believe it is a reasonable interpretation of the statute that states should be able to use an area's designation year for the 2015 ozone NAAQS as the RFP baseline year, as an alternative to the calendar year for the most recent triennial emissions inventory. All states associated with a multi-state nonattainment area must consult and agree on using the alternative baseline year.

3. Comments and Responses

Comment: The EPA received broad support for our proposal to retain the existing flexible approach to establishing an RFP baseline year. Commenters noted that an RFP baseline year fixed to an area's designation may not synchronize with the most recently available triennial emissions inventory at the time ROP/RFP plans are

[14] CAA section 182(b)(1)(B) defines "baseline emissions" as the total amount of actual VOC or NO_X emissions from anthropogenic sources in the area during calendar year 1990, which we have interpreted as corresponding with the emissions inventory for the area as of November 15, 1990; the development of an emissions inventory with that reference date was required under CAA section 182(a)(1).

developed, may not be representative of ozone-producing conditions for the area, and/or would not account for early actions to reduce ozone precursor emissions. A fixed RFP baseline year could necessitate preparing separate emissions inventories, *e.g.*, for attainment demonstration modeling and RFP, at additional time and cost for air agencies with limited resources.

Response: As discussed previously, the EPA's creation of the state-selected alternative RFP baseline year option for the 2008 Ozone NAAQS SIP Requirements Rule was rejected by the court in *South Coast II*, because the court found that the EPA failed to provide a statutory justification for why alternative baselines were appropriate. We agree with the commenter that under certain circumstances a single fixed RFP baseline year could increase resource burden for air agencies. Thus, we are adopting an approach for the 2015 ozone NAAQS that syncs the RFP baseline with triennial emissions inventory reporting years, but permits states to alternatively choose the year of designation.

Comment: One commenter argued that the EPA's existing RFP baseline year approach is illegal because the Act plainly specifies the RFP baseline year in CAA section 182(b)(1)(B) (*i.e.*, calendar year 1990), and that RFP requirements would therefore be triggered—and the RFP baseline year would be set—by the date an area is designated for the revised NAAQS. The commenter claimed that where Congress wanted to authorize variation in implementing the ozone NAAQS, it did so expressly (*e.g.*, allowing the Administrator to adjust SIP deadlines for reclassified areas under CAA section 182(i)).

Response: As discussed previously, the court in *South Coast II* upheld the EPA's selection of 2011, *i.e.*, the most recent year from the 3-year statutory cycle for emissions inventories, as the default RFP baseline year for the 2008 ozone NAAQS as reasonable. We are adopting this same approach for the 2015 ozone NAAQS, while also allowing states to choose an alternative RFP baseline year corresponding with an area's designation year. For the reasons cited previously, we believe both options are reasonable interpretations of the CAA's RFP provisions in adapting those provisions to revised ozone NAAQS.

Comment: A commenter objected to the EPA's proposed interpretation of CAA section 182(b)(1) that would consider areas with an approved 15 percent ROP plan under a prior ozone NAAQS to have satisfied the 15 percent ROP requirement for the 2015 ozone NAAQS. The EPA applied this interpretation previously for purposes of the 1997 and 2008 8-hour ozone standards. The commenter claimed that the proposed 15 percent ROP requirement illegally allows "paper-only" reductions to substitute for the actual emission reductions intended by Congress and articulated in the general rule for creditability of ROP reductions in CAA section 182(b)(1)(C) (*i.e.*, the required reductions are creditable "to the extent they have actually occurred").

Another commenter objected to the 15 percent ROP requirement in general, describing it as outdated, not necessitated under the current ozone standards, and increasingly difficult to achieve given the decreases in ozone precursor emissions that have occurred since the CAA was amended in 1990. If the EPA continues to implement the 15 percent ROP requirement, the commenter argues that required emission reductions should be measured against the 1990 baseline in all cases, and that states should have discretion to apply NO_X or VOC reductions toward the initial 15 percent (VOC) ROP increment.

Response: The EPA disagrees that a state must demonstrate that an area actually achieved the 15 percent ROP within 6 years of the baseline year for a prior NAAQS. Consistent with the decision in *NRDC* v. *EPA*, 571 F.3d 1235 (D.C. Cir. 2009), we continue to maintain that if a state has already met the requirement to submit for approval and to implement a nonattainment area ROP/RFP emissions reduction plan to meet the requirements of CAA section 182(b)(1)(A) for either the 1-hour standard or a prior 8-hour standard, the state will not have to meet it again for the 2015 ozone NAAQS. As noted previously, the court in *South Coast II* affirmed this approach for purposes of the 2008 Ozone NAAQS SIP Requirements Rule.

We also disagree with the comment that the 15 percent ROP is not necessary under current ozone standards and that, if required by the EPA, it should be measured against the 1990 baseline in all cases. The RFP regulation must comply with the CAA, and section 182(b)(1) of the CAA explicitly requires that ozone nonattainment areas classified as Moderate or higher submit an ROP plan to achieve a 15 percent reduction in VOC baseline emissions over a 6-year period following the baseline year. We continue to believe it is reasonable to interpret that baseline year as the one associated with the revised ozone NAAQS and not the year 1990 associated with the then-current 1-hour NAAQS. A 1990 baseline year for areas designated in 2018 would be impractical and an absurd result, especially for areas that were not nonattainment for the ozone NAAQS in 1990 and thus never subject to a past requirement to develop and use a 1990 nonattainment area emissions inventory for purposes of RFP. Assessing 15 percent ROP only during the period 1990–1996 would be meaningless for a nonattainment area that must in 2018 begin achieving emissions reductions to meet an ozone NAAQS with an attainment date in a year after 2018.

Comment: A number of commenters disagreed with the EPA's proposed requirement that creditable emission reductions for 15 percent ROP and 3 percent RFP must be obtained from sources within the nonattainment area. Several of the commenters referenced our proposed requirement regarding control measures for out-of-area sources in a state's jurisdiction (*see* Section IV.C of this preamble), and questioned whether it was reasonable that the EPA could require out-of-area emission reductions for attainment purposes, while not crediting those reductions toward RFP.

Response: The EPA disagrees with the commenters. The proposed requirement that emission reductions must be obtained from within the nonattainment area to be creditable for ROP and RFP is the same as that adopted in the 2008 Ozone NAAQS SIP Requirements Rule, which was challenged and upheld in *South Coast II*. The court in *South Coast II* declared that the related statutory text is unambiguous, noting that RFP is measured from "baseline emissions," which is defined in the CAA as "the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the" baseline year.[15] The court noted the singular term "the area" appears in a CAA section titled "Moderate Areas," and not a greater area (CAA section 182(b); *see also* CAA section 182(c)). The court concluded, in considering the grammar and context of the CAA's RFP provisions, that "in the area" unambiguously refers to baseline emissions within the nonattainment area. *South Coast II*, 882 F.3d at 1146–47. Accordingly, the EPA concludes, as we did in the 2008 Ozone NAAQS SIP Requirements Rule, that we have no legal basis for allowing RFP credits for reductions outside the nonattainment area.

[15] *See* CAA sections 182(b)(1)(A), (b)(1)(B), (c)(2)(B), (d) and (e).

F. Requirements for RACT and RACM

1. RACT

a. Summary of Proposal. The EPA proposed to retain our existing general RACT requirements, which are codified for the 2008 ozone NAAQS at 40 CFR 51.1112, and to add new deadline requirements for certain RACT SIP submissions (*see* Section IV.B of this preamble). For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for how air agencies can provide for RACT in their nonattainment SIPs (80 FR 12278; March 6, 2015).

b. Final Rule. The EPA is retaining our existing general RACT requirements for purposes of the 2015 ozone NAAQS. These requirements, which are being codified at 40 CFR 51.1312(a) and (b), address the content and timing of RACT SIP submittals and implementation, as well as major source criteria for RACT applicability.[16] Underlying these general RACT requirements are well-established EPA policies and guidance, including existing control techniques guidelines (CTGs) and alternative control techniques (ACTs).[17] Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs. The EPA's adopted RACT approach includes our longstanding policy with respect to "area wide average emission rates." This policy recognizes that states may demonstrate as part of their NO_X RACT SIP submission that the weighted average NO_X emission rate of all sources in the nonattainment area subject to RACT meets NO_X RACT requirements; states are not required to demonstrate RACT-level controls on a source-by-source basis. This approach for demonstrating RACT through area-wide average emissions rates was recently upheld in *South Coast II,* 882 F.3d at 1154. The EPA is also finalizing new submittal and implementation deadlines for certain RACT SIP revisions, as discussed in Section IV.B of this preamble.

c. Comments and Responses.

Comment: Two commenters stated that the EPA should extend the submittal deadline for RACT SIPs from 24 months to 36 months following the effective date of a nonattainment area's designation.

Response: The EPA has considered the comments regarding an extended submittal deadline for RACT SIP revisions, but, given the uncertainty regarding the statutory basis for providing such flexibility, does not interpret CAA section 182(b)(2) to allow extending the deadline for RACT SIP submissions triggered by initial nonattainment area designations. We are instead adopting an interpretation consistent with the requirement in the 2008 Ozone NAAQS SIP Requirements Rule that RACT SIP submissions triggered by initial nonattainment area designations must be submitted based on the timeframe provided in CAA section 182(b)(2), *i.e.,* no later than 24 months after the effective date of nonattainment designation for a specific ozone NAAQS. As discussed in Section IV.B of this preamble, the EPA is adopting an alternative approach for RACT SIP revisions triggered by nonattainment area reclassifications or the issuance of a new CTG.

Comment: Several commenters objected to the EPA proposing to retain our "area wide average emission rates" approach for RACT. They contend that the emissions averaging policy violates the clear terms of the CAA, which they argue requires each individual source to meet the NO_X RACT requirement. One commenter provided a legal analysis of statutory language and legislative history as confirming the source-specific basis of RACT requirements. The same commenter also pointed to the EPA's previous RACT guidance[18] and the NO_X RACT exemption provisions of CAA section 182(f)(1) and (2) as further evidence of RACT's source-specific basis.

Response: The EPA disagrees with the commenters. As mentioned previously, the D.C. Circuit recently upheld the RACT emissions averaging policy with respect to the 2008 ozone NAAQS, and we are retaining it for purposes of the 2015 ozone NAAQS. The court held that "the plain language [of the CAA]—in the context of the interrelationship between [42 U.S.C. sections] 7511a(b)(2) and 7502(c)(1)—does not mandate RACT for each individual source." *South Coast II,* 882 F.3d at 1154. In addition to holding that the CAA does not require the approach advanced by the commenters, the court further held that the EPA's area-wide emissions averaging approach for the 2008 ozone NAAQS, which is adopted again here for the 2015 ozone standards, is reasonable. *Id.* ("The EPA's interpretation reasonably allows nonattainment areas to meet RACT-level emissions requirements through averaging within a nonattainment area.").

2. RACM

a. Summary of Proposal. The EPA proposed to retain our existing RACM requirements, which are codified for the 2008 ozone NAAQS at 40 CFR 51.1112. The EPA also proposed to codify the existing requirement under CAA section 172(c)(6) that, in addition to impacts of emissions from sources inside an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area but within a state's boundaries, and to require such other measures for emissions reductions from these intrastate sources as needed to attain the ozone NAAQS by the applicable attainment date (*see* Section IV.C of this preamble). For reference, the final 2008 Ozone NAAQS SIP Requirements Rule describes the EPA's current rationale and approach for how air agencies can provide for RACM in their nonattainment SIPs (80 FR 12282; March 6, 2015).

b. Final Rule. The EPA is retaining our existing general RACM requirements for purposes of the 2015 ozone NAAQS, as codified at 40 CFR 51.1312(c). The EPA interprets the RACM provision to require a demonstration that an air agency has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and, thus, that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.[19] [20] [21]

[16] The EPA has defined RACT as the most stringent emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. *See* related discussion in "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas," Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators (December 9, 1976) (Strelow Memorandum) and the proposed General Preamble Supplement in 44 FR 53762 (September 17, 1979). Availability and feasibility may differ across sources in the same category. *See* "Criteria for Determining RACT in Region IV," Memorandum from John Calcagni, Chief, Economic Analysis Branch, to G.T. Helms, Jr., Chief, Control Programs Operations Branch (June 19, 1985).

[17] The EPA's CTGs and ACTs are available at: *https://www.epa.gov/ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques-documents-reducing.*

[18] *See* Strelow Memorandum.

[19] "State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas" 44 FR 20375 (April 4, 1979). "State Implementation Plans; General Preamble for the Implementation of Title I

Continued

Further, the EPA requires that air agencies consider all available measures, including those being implemented in other areas, but must adopt measures for an area only if those measures are economically and technologically feasible and will advance the attainment date, or if those measures are necessary for RFP. The EPA is retaining our existing general RACM requirements for the 2015 ozone NAAQS based on the current rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule, and the requirements of CAA section 172(c)(6).

c. Comments and Responses. The EPA received no adverse comments on our proposal to retain our existing general RACM requirements for purposes of the 2015 ozone NAAQS. Our responses to comments regarding consideration of other measures for emissions reductions from intrastate sources under CAA section 172(c)(6) are provided in Section IV.C of this preamble.

G. CAA Section 182(f) NO_X Exemption Provisions

1. Summary of Proposal

The EPA proposed to retain our existing NO_X exemption provisions under CAA section 182(f), which are codified for the 2008 ozone NAAQS at 40 CFR 51.1113. These provisions would allow a person or an air agency to petition the Administrator for an exemption from NO_X obligations for the 2015 ozone NAAQS under CAA section 182(f) for any area designated nonattainment and for any area in an OTR. The EPA proposed that NO_X exemptions granted for a previous ozone NAAQS would not apply to relieve an area from CAA section 182(f) NO_X obligations under the 2015 standards.

2. Final Rule

The EPA is finalizing our proposal to retain the existing NO_X exemption provisions under CAA section 182(f) for purposes of the 2015 ozone NAAQS, as codified at 40 CFR 51.1313. NO_X exemptions granted for any prior ozone NAAQS do not relieve an area from CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS. Consistent with current EPA policy, existing NO_X exemptions for prior ozone standards remain valid for purposes of determining applicable requirements for implementing those prior standards.[22]

3. Comments and Responses

The EPA received no significant adverse comments regarding our proposal to retain our existing NO_X exemption provisions under CAA section 182(f) for purposes of the 2015 ozone NAAQS.

H. General Nonattainment NSR Requirements

1. Summary of the Proposed Rule

With one significant exception, the EPA proposed to retain our NNSR requirements contained at 40 CFR 51.165 and part 51 Appendix S, which include provisions for the preconstruction review and issuance of permits to proposed new major stationary sources and major modifications locating in ozone nonattainment areas. The one exception pertained to a proposal to address interprecursor trading (IPT) for meeting the offset requirement for ozone, which is discussed further in Section IV.D of this preamble.

2. Final Rule

The EPA is adopting general NNSR requirements for the 2015 ozone NAAQS at 40 CFR 51.1314, as proposed. As explained in Section IV.D of this preamble, the EPA is restating our existing policy on ozone IPT, which is currently codified at 40 CFR 51.165(a)(11) and part 51 Appendix S, section IV.G.5, in response to a petition for reconsideration. A basic understanding of how the NNSR requirements would otherwise apply to the 2015 ozone NAAQS can be obtained from the preamble discussion at Section VIII.C in the final rule establishing the 2015 ozone NAAQS. *See* 80 FR 65442 (October 26, 2015).

3. Comments and Responses

The EPA received no significant adverse comments regarding our proposed general NNSR requirements. Please see Section IV.D of this preamble for comments related to the EPA restating our existing policy on ozone IPT.

I. Ambient Monitoring Requirements

The EPA did not propose any changes to the existing ozone ambient monitoring requirements that are codified in 40 CFR part 58. Monitoring rule amendments published on October 17, 2006 (71 FR 61236), established minimum ozone monitoring requirements based on population and levels of ozone in an area to better prioritize monitoring resources. The minimum monitoring requirements are contained in Table D–2 of appendix D to part 58. The Photochemical Assessment Monitoring Station (PAMS) program collects ambient air measurements in accordance with the enhanced monitoring requirements of CAA section 182(c)(1). The rulemaking for the final 2015 ozone NAAQS included revisions to the PAMS requirements at 40 CFR part 58 (80 FR 65416; October 26, 2015). The revisions were intended to provide a more spatially dispersed monitoring network, reduce potential redundancy and improve data value while providing monitoring agencies flexibility in collecting additional information needed to understand their specific ozone issues. The EPA received no adverse comments on the existing part 58 ozone ambient monitoring requirements, and makes no changes to these existing requirements in this final rule.

J. Requirements for an OTR

1. Summary of Proposal

The EPA proposed to retain our existing OTR requirements, and to add new deadline requirements for certain RACT SIP revisions (*see* Section IV.B of this preamble). The OTR requirements for the 2008 ozone NAAQS, which are codified in 40 CFR 51.1116, establish the general applicability of CAA sections 176A (interstate transport commissions) and 184 (control of interstate ozone air pollution), and stipulate the criteria and timing for RACT SIP submittals and RACT implementation for those portions of states located in an OTR (*see* 80 FR 12295; March 6, 2015). With the exception of additional submission and implementation deadlines for certain RACT SIP revisions (*see* Section IV.B of this preamble), the EPA proposed to retain the same requirements for the 2015 ozone NAAQS, without revision.

of the Clean Air Act Amendments of 1990; Proposed Rule." 57 FR 13560 (April 16, 1992).

[20] "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," Memorandum from John S. Seitz, Director, OAQPS. November 30, 1999. Available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19991130_seitz_racm_guide_ozone.pdf.*

[21] "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs," Memorandum from John S. Seitz, Director, OAQPS, December 14, 2000, available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20001214_seitz_additional_racm_submissions.pdf.*

[22] "Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation," Memorandum from Stephen D. Page, Director, OAQPS, to Air Directors, Regions I–X (January 14, 2005), available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20050114_page_guidance_8-hr_ozone_nox_exemptions.pdf.*

2. Final Rule

The EPA is finalizing the proposed OTR requirements. The adopted requirements for purposes of the 2015 ozone NAAQS are codified at 40 CFR 51.1316.

3. Comments and Responses

The EPA received no adverse comments specific to the proposed OTR requirements.

K. Fee Programs for Severe and Extreme Nonattainment Areas That Fail To Attain

1. Summary of Proposal

For the 2015 ozone NAAQS the EPA proposed to retain without revision our existing fee program SIP submission requirements for ozone nonattainment areas classified Severe or Extreme, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1117.

2. Final Rule

The EPA is finalizing the proposed requirements. The adopted fee program provisions, codified for the 2015 ozone NAAQS at 40 CFR 51.1317, require states with ozone nonattainment areas classified Severe or Extreme to submit a SIP revision that meets the requirements of CAA section 185 (Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain) within 10 years of the effective date of an area's nonattainment designation. For nonattainment areas reclassified to Severe or Extreme from a lower classification after the date of their initial nonattainment designation, the EPA retains the ability to set an alternative deadline for the section 185 SIP submission, if appropriate, in the final action reclassifying the area. We anticipate that adjusting the section 185 SIP submission deadline could be appropriate in situations where the reclassification action occurs on a date that is unreasonably near to or past the 10-year deadline applicable to areas initially designed Severe or Extreme.

3. Comments and Responses

The EPA received no adverse comments on the proposed requirements.

L. Applicability

The EPA proposed to retain the provision that establishes applicability of the current ozone NAAQS implementation provisions with respect to the prior ozone NAAQS, which is codified for the 2008 ozone NAAQS at 40 CFR 51.1119. This applicability provision states that the implementation provisions for the 2008 ozone standards (subpart AA of part 51) shall replace the implementation provisions for the previous 1997 standards (subpart X of part 51) after revocation of the 1997 NAAQS, except for anti-backsliding purposes. The EPA proposed to retain the same applicability provision for purposes of the 2015 ozone NAAQS, except that the proposed new implementation provisions (to be codified in subpart CC of part 51) would replace those for the 2008 ozone NAAQS (subpart AA) if the 2008 standards are revoked for all purposes, except for anti-backsliding purposes.

As discussed in Section II of this preamble, the EPA is not taking any final action regarding our approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements; the agency intends to address any revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking. As a result, we are not finalizing the proposed applicability provision discussed in this section at this time, which would be dependent on the particular approach that we take to any revocation action for 2008 ozone NAAQS that we may issue in the future.

M. International Transport

Domestic ozone air quality can be influenced by emissions sources located outside of the U.S. These contributions to U.S. ozone concentrations from sources outside of the U.S., which can be from nearby sources in a bordering country or from sources many thousands of miles away,[23] can affect to varying degrees the ability of some areas to attain and maintain the 2015 ozone NAAQS. The EPA continues to work with air agencies and other countries to better understand the extent and implications of transboundary flows of air pollutants and, where possible, to mitigate their impact on U.S. domestic air quality.

In most areas in the U.S. with monitors that exceed the NAAQS, modeling studies demonstrate that the exceedances are due primarily to anthropogenic emissions sources within the U.S. However, Congress recognized the possibility that in some nonattainment areas the ability to attain the NAAQS may be impacted by emissions sources outside of the U.S., and through CAA section 179B ("International Border Areas"), Congress provided the EPA with the authority to address the impact of international emissions in areas designated nonattainment. Specifically, Congress provided that the EPA could approve attainment plans for areas that could attain the relevant NAAQS by the statutory attainment date "but for" emissions emanating from outside the U.S. When applicable, this CAA provision relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those required to address reasonably controllable emissions from within the U.S. Specifically, CAA section 179B(a) provides that the EPA shall approve an attainment plan for such an area if: (i) The attainment plan meets all other applicable requirements of the CAA, and (ii) the submitting state can satisfactorily demonstrate that, "but for emissions emanating from outside the United States," the area would attain and maintain the relevant NAAQS. In addition, CAA section 179B(b) applies specifically to the ozone NAAQS and provides that if a state demonstrates that an ozone nonattainment area would have timely attained the NAAQS by the applicable attainment date "but for emissions emanating from outside of the United States," then the area need not apply for an extension of the ozone attainment dates pursuant to CAA section 181(a)(5), and is not subject to the stationary source fee program provisions of CAA section 185 and the mandatory reclassification provisions under CAA section 181(b)(2)[24] for areas that fail to attain the ozone NAAQS by the applicable attainment date. Section 179B, thus, can be an important tool that provides states relief from the requirement to demonstrate attainment—and from the more stringent planning requirements that would result from failure to attain—in areas where, even though the air agency has taken appropriate measures to address air quality in the affected area, emissions from outside of the U.S. prevent attainment.

1. Summary of Proposal

The EPA proposed a requirement that all demonstrations under CAA section 179B(b), regardless of an area's

[23] Observational and modeling studies have shown that international ozone precursor emissions can lead to ozone formation within the atmospheric boundary layer over far-upwind areas. When meteorological conditions are favorable, this ozone can be transported within the mid- and upper troposphere where ozone lifetimes can exceed one week. Eventually, these ozone plumes can mix down to the surface and contribute to local ozone concentrations within the U.S. Task Force on Hemispheric Transport of Air Pollution, 2010.

[24] The EPA's longstanding view is that CAA section 179B(b) contains an erroneous reference to section 181(a)(2), and that Congress actually intended to refer here to section 181(b)(2). *See* "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, 13569 n. 41 (April 16, 1992).

classification (including nonattainment areas classified as Marginal), must include a showing that the air agency has adopted all RACM, including RACT, for the area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1). We also asked for comment on whether the opportunity for air agencies to submit demonstrations under CAA section 179B should be limited to nonattainment areas adjoining international borders, and on any technical and legal basis for determining whether it is appropriate to have, or conversely whether it is appropriate not to have, such a geographic limitation. The proposal noted that the science review supporting the 2015 ozone NAAQS suggested that the influence of international sources on U.S. ozone levels will be largest in locations near the borders of Mexico or Canada (80 FR 65292, 65444; October 26, 2015) and that, historically, only states with nonattainment areas in the immediate vicinity of the Mexican border have submitted CAA section 179B demonstrations to the EPA (81 FR 81303; November 17, 2016).

2. Final Rule

The EPA is not finalizing our proposed requirement that all demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT.

The EPA is choosing to not adopt our proposal for this final rule because the Act does not require states to implement RACM/RACT in Marginal ozone nonattainment areas. For purposes of CAA section 179B demonstrations for the 2015 ozone NAAQS, we are maintaining the approach used for prior ozone standards that only areas classified Moderate and higher must show that they have implemented RACM/RACT.

In the proposal, the EPA also solicited comment on whether—but did not propose that—demonstrations under CAA section 179B should be limited only to nonattainment areas adjoining international borders. After considering comments received, we are not adopting any geographic limitation on the use of CAA section 179B for purposes of the 2015 ozone NAAQS. We are instead clarifying that a demonstration prepared under CAA section 179B could consider emissions emanating from North American or intercontinental sources and is not restricted to areas adjoining international borders, consistent with the approach articulated in the preamble of the 2008 Ozone NAAQS SIP Requirements Rule.

The EPA encourages air agencies to coordinate with their EPA Regional office to identify approaches to evaluate the potential impacts of international transport and to determine the most appropriate information and analytical methods for each area's unique situation. The EPA will also work with air agencies that are developing attainment plans for which CAA section 179B is relevant, and ensure the air agencies have the benefit of the EPA's understanding of international transport of ozone and ozone precursors. Air agencies are encouraged to consult with their EPA Regional office to establish appropriate technical requirements for these analyses. In addition, the EPA is currently developing supplementary technical information and guidance to assist air agencies in preparing demonstrations that meet the requirements of CAA section 179B.

3. Comments and Responses

Comment: The EPA received numerous comments on our proposed RACM/RACT requirement for all demonstrations under CAA section 179B(b) (including for Marginal areas), and providing feedback on whether CAA section 179B applicability should be limited to nonattainment areas adjoining international borders. There was broad objection to both approaches, which many commenters interpreted as restricting the potential use of CAA section 179B for attainment plans under the 2015 ozone NAAQS.

Response: As discussed previously, the EPA is not interpreting CAA section 179B as requiring that demonstrations under CAA section 179B(b) for Marginal areas include a showing that the air agency adopted all RACM, including RACT. We are also finalizing our existing approach that does not restrict the use of CAA section 179B demonstrations to areas adjoining international borders.

Comment: Several commenters supported the proposed RACM/RACT requirement for all demonstrations under CAA section 179B(b). One commenter stated that CAA section 179B does not alter the subpart 1 requirement in CAA section 172(c)(1) that all SIPs provide for implementation of RACM/RACT as expeditiously as practicable. The same commenter also argued that failure to require RACM/RACT for Marginal areas seeking relief under CAA section 179B would upset the subpart 2 scheme for reclassification and implementation of basic reasonable control measures, and prevent attainment of the NAAQS as expeditiously as practicable.

Response: The EPA is not finalizing our proposed requirement that all demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT. The Act does not require implementation of RACM/RACT in Marginal ozone nonattainment areas under the relevant implementation provisions in subpart 2, and nothing in 179B alters the statutory requirements with respect to RACM/RACT obligations in subpart 2. The EPA believes the CAA's specific provisions for ozone Marginal areas in section 182(a) rather than general nonattainment provisions in section 172(c)(1) prescribe the specific SIP revision requirements for such areas. In section 182(a), the CAA states "Each state [with a Marginal area] shall . . . submit to the Administrator the state implementation plan revisions *(including the plan items) described under this subsection* . . ." (emphasis added). Subsection 182(a) does not list RACM/RACT as a plan item. This is in clear contrast to the provisions in subsection 182(b) for Moderate and higher classified areas, which identifies specific RACT requirements (*e.g.*, section 182(b)(2)) and plan submissions that "provide such specific annual reductions in emissions . . . as necessary to attain . . ." For this final rule, we are adopting our existing approach grounded in the plain language of CAA section 179B(b), which applies specifically to the ozone NAAQS and does not explicitly modify the subpart 2 planning requirements in CAA section 182 to require RACM/RACT for Marginal areas.

IV. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained With Specific Revisions

For purposes of implementing the 2015 ozone NAAQS, we are promulgating several regulatory provisions that are similar to the corresponding implementation provisions for the 2008 ozone NAAQS, but with modifications to reflect application to the 2015 ozone NAAQS, as explained later. The existing implementation provisions for the 2008 standards are codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards will now be codified at subpart CC of part 51. The revised provisions for the 2015 standards address SIP requirements pertaining to MCD for RFP; the submission and implementation deadlines for RACT SIP revisions; the consideration of intrastate pollution sources outside of a nonattainment area for attainment planning purposes;

NNSR IPT for ozone; and emissions inventories and emissions statements.

A. Requirements for RFP: Milestone Compliance Demonstrations

The EPA proposed to revise our RFP provisions for purposes of the 2015 ozone NAAQS to address MCDs required under CAA section 182(g) for ozone nonattainment areas classified Serious or higher. The RFP regulatory provisions for the 2008 ozone NAAQS characterize the emissions reductions and time intervals that constitute RFP milestones, but do not address the requirements for demonstrating compliance with these milestones.

CAA section 182(g)(1) requires that states demonstrate whether nonattainment areas classified Serious, Severe or Extreme have achieved incremental RFP emission reductions needed to ensure attainment of the NAAQS by the prescribed applicable time intervals (*i.e.*, milestones). The statute establishes an initial milestone date of 6 years after November 15, 1990, and at intervals of 3 years thereafter. These milestones are established in the general RFP requirements of CAA sections 182(c)(2)(B) for Serious areas. Sections 182(d) and 182(e) incorporate those requirements for, respectively Severe and Extreme areas. Accordingly, the timeline for Serious areas provided in section 182(c)(2)(B) also applies to Severe and Extreme areas.

CAA section 182(g)(2) requires that states submit to the Administrator a demonstration that an RFP milestone has been met, not later than 90 days after the applicable milestone date. Section 182(g) refers to the required emissions reduction for the time interval as the "applicable milestone." Section 182(g)(2) of the CAA states that the form, manner of submittal and contents of the required compliance demonstration shall be set by the Administrator by rule.

CAA sections 182(g)(3) and (g)(5) establish measures a state "shall elect" to implement if the state fails to submit a MCD by the due date or the EPA determines that a milestone was not met. For Serious and Severe areas, an air agency shall elect within 90 days of the failure or determination to: (1) Have the area reclassified to the next higher classification; (2) implement additional measures to meet the next milestone per the applicable contingency plan; or (3) adopt an economic incentive program as described in CAA section 182(g)(4). For an Extreme area, an air agency shall within 9 months of the failure or determination submit a SIP revision to implement a CAA section 182(g)(4) economic incentive program.

1. Summary of Proposal

The EPA proposed that an air agency will have the option to demonstrate milestone compliance in terms of either: (1) Compliance with control measures requirements in an RFP plan that complies with the requirements of the CAA (*e.g.*, percent implementation), or (2) actual emissions reductions, as demonstrated with periodic emissions inventory data required under CAA section 182(a)(3)(A). In considering the form and content of an ozone MCD submittal, the EPA referenced the parallel regulatory requirements for fine particulate matter ($PM_{2.5}$), which were added in the 2016 final implementing regulations for the $PM_{2.5}$ NAAQS.[25] The EPA also considered the amount of time allowed in the statute for states to make the required submittal.

2. Final Rule

The EPA is finalizing MCD requirements for RFP as proposed. These requirements, codified at 40 CFR 51.1310(c), are consistent with the $PM_{2.5}$ SIP Requirements Rule.[26] Similar to the statutory requirements for ozone, CAA section 189(c)(1) establishes a 3-year cycle for $PM_{2.5}$ milestones. For both pollutants, the CAA provides Administrator discretion in setting the form and content of the milestone demonstration submittal.[27]

The $PM_{2.5}$ SIP Requirements Rule requires that the quantitative milestones be constructed such that they can be tracked, quantified and/or measured adequately in order for an air agency to meet its milestone reporting obligations, which come due 90 days after a given milestone date. For $PM_{2.5}$, the EPA interprets CAA section 189(c) to allow air agencies to identify milestones that are suitable for the specific facts and circumstances of the attainment plan for a particular area, so long as they provide an objective means to measure RFP.[28]

The EPA is adopting a similar approach for MCDs for the 2015 ozone NAAQS. We interpret CAA sections 182(g)(1) and 182(g)(2) as imposing two separate obligations on an air agency: (1) To determine whether an affected nonattainment area has achieved an incremental emissions reduction corresponding with the RFP milestone; and (2) to demonstrate to the satisfaction of the Administrator that the RFP milestone has been met. We believe it would be sufficient for purposes of CAA section 182(g)(2) for an air agency to demonstrate milestone compliance in terms of compliance with control measures requirements in the approved RFP plan (*e.g.*, percent implementation), because the approach is grounded in SIP provisions that correlate control measures and resulting emissions reductions. As an alternative, an air agency could rely on periodic, triennial emissions inventory data for demonstration purposes where the appropriate data are obtainable within the 90-day MCD submittal timeframe.[29] In all cases, the EPA would review each RFP plan submission on a case-by-case basis to determine whether the milestones contained in the plan are specific enough to provide an objective means for evaluating the area's progress toward attainment, consistent with the statutory requirements of CAA section 182(g).

We are providing additional guidance on the MCD submission process in this final rule. Consistent with the EPA's process for $PM_{2.5}$ quantitative milestones, the EPA believes it would be appropriate for MCD to be submitted from the Governor or Governor's designee to the Regional Administrator of the respective EPA Regional office serving the submitting state. The EPA will notify the state of our determination (regarding whether or not the state's demonstration is adequate) by sending a letter to the appropriate

[25] *See* "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements" 81 CFR 58063–64; August 24, 2016), hereafter $PM_{2.5}$ SIP Requirements Rule.

[26] *See id.*

[27] CAA sections 182(g)(2) and 189(c)(2) share the same basic milestone demonstration submittal requirements, *i.e.*, not later than 90 days after the applicable milestone date, each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. For $PM_{2.5}$, the statute further qualifies that the submittal must also demonstrate that all measures in the SIP have been implemented.

[28] In the Addendum to the General Preamble, the EPA suggested (for implementation of the PM_{10} NAAQS) possible metrics that "support and demonstrate how the overall quantitative milestones identified for an area may be met," such as percent implementation of control strategies, percent compliance with implemented control measures and adherence to a compliance schedule. This list was not exclusive or exhaustive but reflected the EPA's view that the purpose of the quantitative milestone requirement is to provide an objective way to determine whether the area is making the necessary progress towards attainment by the applicable attainment date (59 FR 41998 at 42016; August 16, 1994).

[29] Triennial emissions reporting periods are set by regulation in the AERR at 40 CFR part 51, subpart A. The most recent and upcoming reporting years are 2017, 2020, 2023 and 2026, where the reports are due to the EPA by December 31 of the calendar year that follows the reporting year. As discussed in Section IV.E of this preamble, the adopted regulations for the 2015 ozone NAAQS provide that states may use the most recent triennial report period emissions inventory to satisfy the nonattainment area reporting requirements of CAA section 182(a)(3)(A). *See* 40 CFR 51.1315(b).

Governor or Governor's designee or, alternatively, by publishing a notice in the **Federal Register**. The EPA encourages states to submit MCDs, including supporting documents, through the agency's electronic SIP submission system [30] in order to simplify the process and reduce resource burden on all sides. The EPA believes it is consistent with statutory requirements to not consider MCDs to be formal SIP revisions subject to CAA public notice and comment requirements.

3. Comments and Responses

Comment: One commenter argued that an "actual emissions reductions" approach using emissions inventory data is the only lawful and rational approach for demonstrating RFP milestone compliance. Because the Act defines RFP baseline emissions in terms of actual VOC or NO_X emissions (*see* CAA section 182(b)(1)(B)), the commenter contended that RFP can only be satisfied by actual emission reductions. This interpretation, they claimed, is supported by the CAA's legislative history and the EPA's General Preamble. Further, the commenter notes that RFP must address "any growth in emissions after" the baseline year (*see* CAA sections 182(b)(1)(A)(i) and 182(c)(2)(B)) and, therefore, only actual emissions would be sufficient to gauge compliance with an RFP baseline.

Response: The EPA disagrees with the commenter that actual emissions reductions are the only possible basis for demonstrating RFP milestone compliance under CAA section 182(g). For $PM_{2.5}$, the statute requires quantitative milestones that demonstrate RFP, whereas for ozone CAA section 182(g)(1) uses the term "applicable milestone" to refer to the required RFP emissions reduction. However, CAA section 182(g)(2) specifically provides the Administrator the authority and discretion to establish the "form and manner" of MCDs, and the EPA is exercising this authority and discretion through the regulations adopted in this final rule. We encourage air agencies to work with their EPA Regional office to develop a MCD suitable for the specific facts and circumstances of the attainment plan for a particular area (addressing, as appropriate, the potential emissions growth noted by the commenter), which provides an objective means to measure RFP.

Comment: Two commenters supported the EPA's proposed MCD requirements and urged the agency to issue related guidance. One of the commenters noted that the proposed MCD regulations were silent on the form and manner of submittal, and requested that the EPA clarify who is required to submit the MCD, whether the submission is considered a SIP revision, and whether public notice would be required for the MCD. The same commenter further requested that the EPA clarify whether historical emissions inventory data can be used for MCDs where the required RFP reduction was achieved in advance of the applicable milestone date.

Response: The EPA has provided additional guidance on the MCD submission process in this final rule preamble, as explained earlier, and intends to develop more detailed guidance for preparing RFP MCD for ozone and $PM_{2.5}$. Regarding the use of historical emissions inventory data in MCDs, we believe our adopted MCD requirements would accommodate this approach, so long as the MCD submission provided a sufficiently objective means for evaluating the area's progress toward attainment, consistent with the statutory requirements of CAA section 182(g).

B. Requirements for RACT: Deadlines for Submittal and Implementation of RACT SIP Revisions

The EPA proposed new RACT SIP revision submission and implementation deadlines for specific kinds of triggering events that may occur after the EPA has initially designated areas under a revised ozone NAAQS. The RACT provisions established in the 2008 Ozone NAAQS SIP Requirements Rule address RACT SIP revision submission and implementation deadlines for areas (including portions of a state located in an OTR) subject to initial designation and existing RACT requirements, including requirements described in existing CTGs. CAA section 182(b)(2) establishes that a state shall submit a SIP revision to provide for implementation of RACT by 2 years after November 15, 1990, and provide for RACT implementation as expeditiously as practicable, but no later than May 31, 1995 (approximately 54 months from the enactment date of the 1990 CAA Amendments). As codified for the 2008 ozone NAAQS at 40 CFR 51.1112, the EPA interpreted this CAA timeframe to require submittal of RACT SIP revisions no later than 24 months after the effective date of initial area designations, and implementation of the RACT SIP revisions no later than January 1 of the fifth year after the effective date of initial designations. Regarding mandatory reclassifications pursuant to CAA section 181(b)(2), CAA section 182(i) allows the Administrator to adjust applicable deadlines (excluding attainment dates), including those for SIP submissions and implementation. For voluntary reclassifications, CAA section 181(b)(3) does not establish a precise timeframe for submitting SIP revisions. The EPA's general practice is to establish SIP revision submission deadlines as part of the action granting an air agency's request for voluntary area reclassification.

The EPA is retaining these general RACT provisions for purposes of the 2015 ozone NAAQS, based on the rationale articulated in the final 2008 Ozone NAAQS SIP Requirements Rule (*see* Section III.F of this preamble). However, the existing RACT provisions do not specify deadlines for some RACT SIP revision submittal and implementation requirements triggered by events occurring after initial area designations, including area reclassifications and the issuance of new CTGs. The following sections address the RACT submittal and implementation deadlines for these post-designation scenarios.

1. RACT SIP Revision Submittal and Implementation Deadlines for Newly Reclassified Areas

a. Summary of Proposal. The EPA proposed default submission and implementation deadlines for SIP revisions resulting from area reclassifications that occur after initial area designations under an ozone NAAQS.[31] This includes mandatory reclassification to a higher classification upon failure to attain (pursuant to CAA section 181(b)(2)) and voluntary reclassification to a higher classification upon an air agency's request (pursuant to CAA section 181(b)(3)). We proposed that, following a reclassification action, RACT SIP revisions be submitted no later than 24 months after the effective date of reclassification, or by an alternative deadline established by the Administrator as part of the action

[30] State Planning Electronic Collaboration System (SPeCS) for SIPs. For more information *see https://www.epa.gov/air-quality-implementation-plans/submit-sips-online.*

[31] For purposes of this preamble discussion, "reclassification" is assumed to encompass nonattainment areas being reclassified to a higher classification, attainment areas being redesignated as nonattainment and assigned an initial classification of Moderate or higher, and new OTR assignments. Similarly, "RACT SIP revision" is assumed to encompass initial RACT SIPs triggered by an initial area classification of—or reclassification to—Moderate or higher.

reclassifying an area. We proposed that the RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. We also proposed that the Administrator would retain existing authority to establish a different implementation deadline as part of the action reclassifying an area. This proposed approach would apply to nonattainment area reclassifications.

b. Final Rule. The EPA is finalizing the proposed deadlines with clarifications, as codified at 40 CFR 51.1312(a)(2) and (3). To address reclassification scenarios, we are adopting default submission and implementation deadlines for resulting SIP revisions. Following a reclassification action, RACT SIP revisions must be submitted no later than 24 months after the effective date of reclassification, or by an alternative deadline established by the Administrator as part of the action reclassifying an area. RACT SIP revisions must be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. We are clarifying that the term "ozone season attainment year" used in the preamble to the proposed rulemaking should read "attainment year ozone season" as correctly presented in the proposed regulatory definition at 40 CFR 51.1300(i). The Administrator retains authority to establish different RACT SIP revision submission and implementation deadlines as part of the action reclassifying an area.

We are also in this final rule clarifying the implementation deadline for RACT SIP revisions triggered by reclassification actions that occur after initial area designations. As presented in the preamble to the proposed rulemaking, these RACT SIP revisions must be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submission deadline, whichever is earlier. The Administrator also has the authority to establish a different implementation deadline as part of the reclassification action (81 FR 81293; November 17, 2016). The proposed regulatory text in 40 CFR 51.1312(a)(3)(ii) incorrectly omitted the alternative implementation deadline—*i.e.*, it omitted the phrase "start of the attainment year ozone season associated with the area's new attainment deadline"—and we have added this language to the final rule regulatory text, consistent with the discussion in the preamble to the proposed rulemaking. These default deadlines are grounded in the construct of the overall RACT SIP revision submission and implementation timeframe articulated in section 182(b)(2) of the CAA, and are also intended to, where possible, provide at least one full ozone season in advance of an area's maximum attainment date for implemented controls to achieve emission reductions.

c. Comments and Responses.

Comment: Several commenters expressed the general concern that the default timelines would not provide sufficient time for submission and/or implementation of RACT SIP revisions triggered by reclassification actions, with some commenters suggesting that air agencies should have 3 years to prepare and submit the required SIP revision. Another commenter said that the EPA should not establish RACT deadlines more stringent than those for similarly classified areas, and that it should be a state's responsibility to determine what is "as expeditiously as practicable" as it relates to the schedule for submitting its required SIP revision.

Response: The EPA acknowledges the commenters' general concern that mandatory reclassification actions can limit the time available to submit and implement required RACT SIP revisions, but emphasizes that CAA section 182(i) does not allow the EPA to extend the maximum attainment date corresponding with an area's new classification. We have noted this statutory constraint previously in establishing the SIP revision submission deadline for nonattainment areas reclassified to Moderate after failing to attain the 2008 ozone NAAQS by the Marginal attainment date of July 20, 2015. In the face of the impending Moderate area attainment date (July 20, 2018), the EPA exercised our authority under CAA section 182(i) to set a uniform SIP submission deadline for affected areas at the latest date compatible with the RACT implementation deadline for Moderate areas (81 FR 26699; May 4, 2016).[32]

Our adopted requirements are intended to maximize planning flexibility within the fixed outer bound of an area's maximum attainment date, by retaining the Administrator's discretion under CAA section 182(i) to set alternative RACT SIP submission and implementation deadlines where appropriate. This discretion could potentially apply to the extended submission and implementation deadlines suggested by some commenters, though the degree of flexibility would be dictated by the available compliance timeframe, bounded by a reclassified area's maximum attainment date. For example, an air agency that anticipates an area will not timely attain can request a voluntary reclassification under CAA section 181(b)(3), which would provide more time and potential flexibility for required RACT SIP submissions and implementation than would a later mandatory reclassification under CAA section 181(b)(2) upon actual failure to attain.

At the same time, the EPA believes it is important to provide default submission and implementation deadlines grounded in our overall approach for RACT SIP revisions outlined in CAA section 182(b), in the event that the Administrator does not exercise his or her discretion to set alternative deadlines in a reclassification action. Regarding the comment that the EPA should not establish RACT deadlines more stringent than those for similarly classified areas, we disagree and note that (particularly for mandatory reclassification actions) the Administrator cannot alter the reclassified area's maximum attainment date, which necessarily provides a shorter RACT SIP timeframe than for areas initially assigned the same classification. The EPA disagrees with the comment that it should be a state's responsibility to determine what is "as expeditiously as practicable" as it relates to the schedule for submitting their required SIP revision. The language of CAA section 182(b)(2) clearly establishes the statutory basis for RACT SIP submission deadlines, while qualifying that the SIP revisions shall provide for *implementation* of required measures as expeditiously as practicable, but not later than a date that the EPA interprets relative to the Moderate area attainment date.

Comment: A commenter remarked that the proposed default deadlines for RACT SIP revisions triggered by reclassification actions could result in implementation deadlines occurring after a reclassified area's maximum attainment date. The commenter provided an example scenario where a

[32] That latest compatible date for the 2008 ozone NAAQS was no later than January 1 of the 5th year after the effective date of designation for the NAAQS, *i.e.*, January 1, 2017.

nonattainment area initially classified as Marginal (*e.g.*, in 2017) fails to attain by the Marginal attainment date (in 2020) and is reclassified to Moderate (in 2021), with its RACT SIP submission due 2 years later (in 2023). The commenter goes on to illustrate how applying a default RACT implementation deadline of no later than January 1 of the third year after the associated SIP revision submission deadline would place that default implementation deadline later than the 2023 attainment date for Moderate areas. The commenter noted it was arbitrary and unlawful for the EPA to propose default deadlines that contravene statutory structure in this manner.

Response: The EPA disagrees with the commenter that our default submission and implementation deadlines for RACT SIP revisions triggered by area reclassifications contravene the CAA. The default submission deadline of no later than 24 months after the effective date of reclassification is grounded in our longstanding interpretation of the RACT SIP submission timeframe in CAA section 182(b)(2). As discussed previously, we are clarifying and adopting in this final rule our proposed default implementation deadline that requires RACT SIP revisions to be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submission deadline, whichever is earlier. The EPA agrees with the commenter that applying the latter implementation deadline (*i.e.*, January 1 of the third year after the associated SIP revision submission) would exceed the area's maximum attainment date in the commenter's Marginal-to-Moderate hypothetical mandatory reclassification scenario. We note, however, that the earlier alternative default deadline (*i.e.*, implementation by the start of the attainment year ozone season) would instead apply in this case, and would be compatible with the RACT implementation occurring before the area's attainment date passes. In the case where an air agency requests a voluntary reclassification beyond a single level (*e.g.*, Marginal to Serious or Moderate to Severe),[33] the earlier default implementation deadline could potentially be January 1 of the third year after the associated SIP revision submission. This approach is compatible with the statutory requirement for areas initially classified Serious and higher, which must implement RACT no later than January 1 of the fifth year after the effective date of designation (*i.e.*, the attainment year for Moderate areas), and are thus afforded additional time for implemented controls to achieve emission reductions.

2. RACT SIP Revision Submittal and Implementation Deadlines Associated With New Control Techniques Guidelines

a. Summary of Proposal. The EPA proposed two approaches for establishing submission and implementation deadlines for SIP revisions triggered by new CTGs issued by the EPA after the promulgation of initial area designations under a revised ozone NAAQS. Under the first approach, we proposed a RACT SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, or the deadline established by the Administrator in the action issuing the CTG, and that RACT SIP revisions must be implemented no later than January 1 of the third year after the associated SIP revision submission deadline. Under the second approach, we also articulated the Administrator's authority to establish a deadline for implementing RACT SIP revisions as part of the action issuing a new CTG. These proposed approaches would apply to covered sources in nonattainment areas and portions of a state located in an OTR subject to new RACT SIP obligations.

b. Final Rule. The EPA is finalizing a combination of the proposed approaches, as codified at 40 CFR 51.1312(a)(2) and (3). For CTGs issued between November 15, 1990, and the date of attainment, CAA section 182(b)(2) requires a state to submit the associated RACT SIP revision, where applicable, within the timeframe established by the Administrator in issuing the CTG. The EPA interprets this provision as authorizing the Administrator to set a SIP submission deadline in the action issuing any future CTG. However, the agency is also establishing a default submission deadline of no later than 24 months after the effective date of the action issuing the CTG, which is grounded in our overall approach for RACT SIP revisions outlined in CAA section 182(b), in the event that the Administrator does not set an alternative submission deadline as part of a CTG action.

While CAA section 182(b)(2) addresses the submission requirements for RACT SIP revisions triggered by new CTGs, the CAA is otherwise silent regarding the schedule for implementation of those RACT SIP revisions triggered by new CTGs. When new CTGs are issued, these RACT SIP revisions would be applicable to areas classified Moderate or higher, and to any portion of a state located in an OTR. For CTGs in effect at the time of initial area designations for a revised NAAQS, the EPA has interpreted the relevant CAA provisions to require implementation of related RACT SIP revisions as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of initial designations for the revised NAAQS (80 FR 12279; March 6, 2015). For RACT SIP revisions triggered by new CTGs issued after initial area designations, we are adopting the proposed default implementation deadline of no later than January 1 of the third year after the associated SIP revision submission deadline. We anticipate that this adopted default implementation deadline will provide an overall RACT schedule similar to that for sources subject to CTG requirements upon initial area designations.

We are also articulating in this final rule the Administrator's authority to establish an alternative to the default deadline for implementing RACT SIP revisions, as part of the action issuing a new CTG. Under this option, setting a RACT SIP revision implementation deadline as part of a CTG action would allow the Administrator to tailor the implementation timeframe to the particular technical considerations and attainment objectives associated with the sources subject to the CTG and the overall attainment schedule. The adopted approaches for establishing RACT SIP submission and implementation deadlines would apply to covered sources in nonattainment areas and portions of a state located in an OTR subject to new RACT SIP obligations.

c. Comments and Responses.

Comment: Several commenters stated that a default submission deadline is not necessary for RACT SIP revisions triggered by the issuance of a CTG after initial area designations. They noted that the CAA expressly authorizes the Administrator to set a RACT SIP submission deadline as part of the related CTG document, and that a default deadline is either redundant or

[33] For example, the state of California requested and was granted voluntary reclassifications beyond a single level for several nonattainment areas for the 1997 ozone NAAQS (*see* 81 FR 81285; November 17, 2016).

could be interpreted to restrict the Administrator's authority.

Response: The EPA agrees with commenters that CAA section 182(b)(2) authorizes the Administrator to set a RACT SIP submission deadline as part of the related CTG document. As discussed previously, CAA section 182(b)(2) expressly requires that states submit RACT SIP revisions triggered by new CTG issuance within a period established by the Administrator, and we interpret this provision to authorize—but not require—the Administrator to set a RACT SIP submission deadline in the action issuing the CTG. As a result, we are adopting the proposed default SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, in addition to affirming in this final rule the Administrator's existing authority to set an alternative RACT SIP submission deadline as part of the action issuing the CTG.

C. Requirements for RACM: Consideration of Sources of Intrastate Transport of Pollution

1. Summary of Proposal

As discussed in Section III.F.2 of this preamble, the EPA proposed to require that, for each nonattainment area for which an attainment demonstration is required (*see* Section III.D of this preamble), an air agency shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. The EPA further proposed to codify the existing requirement under CAA section 172(c)(6) that, in addition to sources located in an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state's boundaries), and must require other control measures on these intrastate sources if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date. This proposed rulemaking provision is consistent with SIP elements required under the CAA, as well as existing EPA interpretations of CAA section 172(c)(6) as articulated in previous NAAQS implementation rulemakings.

2. Final Rule

The EPA is finalizing the requirement regarding consideration of "other control measures" for intrastate sources of pollution, as proposed. CAA section 172(c)(6) requires that SIP provisions include enforceable emission limitations and other control measures, means or techniques as may be necessary or appropriate to attain a standard by the applicable attainment date. The EPA interprets this provision to include "additional reasonable measures," which are those measures and technologies that can be applied to any emissions source within the state's jurisdiction, including those outside of a nonattainment area. Upwind sources within a state may have a significant impact on air quality in a downwind nonattainment area, and failure to consider and require, as appropriate, reasonable control measures for these sources may preclude attainment of a NAAQS by the attainment date. Though not directly a part of a nonattainment area RACM analysis, the EPA has addressed this "other control measures" provision in the preamble discussions for previous NAAQS implementation rulemakings,[34] and for clarity is codifying this interpretation in this final rule at 40 CFR 51.1312(c). As discussed in Section III.F of this preamble, the EPA is otherwise adopting all RACM requirements for purposes of the 2015 ozone NAAQS, based on the rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

3. Comments and Responses

Comment: A number of commenters opposed the EPA's interpretation of CAA section 172(c)(6) as applying to emissions sources outside of designated nonattainment areas. As one commenter stated, the plain language of CAA section 172 in general focuses its discussions and references to sources within a designated nonattainment area, and makes no mention of requiring emission reductions for sources outside the nonattainment area.

Response: The EPA disagrees with the commenters concerning the proper application of CAA section 172(c)(6). Unlike other SIP requirements under CAA section 172(c)(1), such as RACM/RACT-level controls on sources located in a nonattainment area, CAA section 172(c)(6) is not limited by its terms to sources located in the nonattainment area. Upwind sources within a state may have a significant impact on air quality in a nonattainment area, and CAA section 172(c)(6) imposes a potential obligation upon states to impose emission controls on sources located outside a designated nonattainment area that are in addition to, and beyond those, otherwise required on sources located the nonattainment area, if necessary or appropriate for purposes of attainment by the attainment date.

Comment: Some commenters contended that emissions from sources outside a nonattainment area, if nearby and affecting a nonattainment area's ability to timely attain, should be accounted for in setting nonattainment area boundaries as part of the designations process under CAA section 107(d).

Response: The EPA agrees with commenters that a designated nonattainment area should already include the nearby sources that, at the time of designations, were determined to be contributing to violations in the area. But we disagree that the designations process under CAA section 107(d) is the exclusive approach for identifying relevant contributing sources for a nonattainment area, as there may be additional contributing sources within a state that were not sufficiently "nearby" the area, or were otherwise not identified in the nonattainment area designations process as contributing to violations in the area. Consistent with our existing policy, the EPA interprets CAA section 172(c)(6) as imposing a separate obligation to consider and control sources located outside of a nonattainment area but within a state's jurisdiction, if necessary or appropriate to attain a standard by the applicable attainment date.

Comment: Multiple commenters interpreted the EPA's proposal as imposing a mandatory requirement for states to consider and implement emission controls for intrastate sources located outside of a designated nonattainment area. Some commenters characterized the proposal as requiring RACM outside a nonattainment area, where other commenters requested that we further clarify a state's discretion, under CAA section 172(c)(6), to consider and require "other control measures" for sources located outside of a nonattainment area.

Response: The EPA believes our interpretation of CAA section 172(c)(6), *under certain circumstances,* establishes a mandatory requirement for states to consider and implement emission controls for sources inside the state but outside of a designated nonattainment area. The language of the statute, and our adopted regulatory text in 40 CFR 51.1312(c), describe a conditional requirement for placing controls such sources, *i.e.*, states are required to impose controls on sources located outside of a nonattainment area but

[34] *See* the Phase 2 proposed rulemaking (68 FR 32829; June 2, 2003) and final rule to implement the 8-hour ozone NAAQS (70 FR 71623; November 29, 2005), and the final rule to implement the $PM_{2.5}$ NAAQS (81 FR 58035; August 24, 2016).

within the state's jurisdiction, only in circumstances where that is necessary or appropriate to provide for attainment by the attainment date, because the emission controls required on sources *within* the nonattainment area are not sufficient to provide for attainment by that date. This qualification indicates that the obligation is tied to the attainment needs of the nonattainment area in question and does not apply more broadly. Further, the EPA emphasizes that we do not interpret section 172(c)(6) to automatically require states to conduct an evaluation of all sources and all potential controls throughout the entire state regardless of attainment needs. However, if necessary to achieve attainment by the applicable attainment date, the EPA believes the CAA obligates states to place emission controls on significant emissions sources elsewhere within the state as needed to achieve the necessary reductions.

D. Nonattainment NSR Offset Requirement: Interprecursor Trading for Ozone Offsets

1. Summary of Proposal

In response to a petition for reconsideration granted on November 5, 2015, the EPA proposed to reaffirm our longstanding policy regarding IPT for ozone, which is currently codified at 40 CFR 51.165(a)(11) and part 51 Appendix S, section IV.G.5,[35] by re-proposing the existing regulatory provisions with revised text, and adding specific criteria for developing and implementing an IPT program.[36] In addition, the EPA indicated that the re-proposed IPT provision, when finalized, would supersede any previous ozone IPT policy articulated in earlier EPA guidance.[37] Further, the November 17, 2016, proposal explained that the EPA proposed no other changes to the existing requirements in the NNSR regulations.[38]

The proposal noted the EPA's continued interpretation that the CAA accommodates the use of technically supported IPT to satisfy the NNSR offset requirement. As discussed in greater detail in the Comments and Responses section that follows, the EPA stated at proposal that the CAA allows the total annual tonnage of emissions of one ozone precursor to be offset by reductions in total actual annual emissions of another ozone precursor (in units of tons per year (tpy)) pursuant to an IPT ratio that shows the reductions will have an equivalent or greater air quality benefit. The proposal explained that the authority to permit IPT is based on the language of section 173(c)(1) of the CAA and the definition of "air pollutant" in section 302(g) of the CAA, and that ozone is the regulated pollutant at issue (rather than NO_X or VOC, which are both recognized precursors to the formation of ground-level ozone concentrations).

The EPA proposed that states interested in implementing an ozone IPT program must submit the following to the EPA as part of a plan for approval: (1) IPT provision(s), including area-specific default IPT ratio(s),[39] [40] where applicable; (2) a description of the air quality model(s) used to develop any default IPT ratio(s); and (3) an accompanying modeling demonstration showing that such ratio(s) provide an equivalent or greater air quality benefit with respect to ground level ozone concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

The EPA recommended that each air agency implementing an IPT program consult with the appropriate EPA Regional office as the air agency develops a modeling protocol to establish a default IPT ratio or ratios[41] for a nonattainment area. The EPA sought comments on the proposed contents of the plan submission and the approach for establishing any default IPT ratios.

When the EPA published our NNSR implementation rules for $PM_{2.5}$ in 2008, we indicated that, while the new implementation rules allowed air agencies to adopt IPT programs to satisfy the NNSR offset requirements for $PM_{2.5}$, such IPT was not permissible for netting purposes. *See* 73 FR 28340 (May 16, 2008). Consistent with that policy, in the proposal the EPA proposed that an IPT program could not be used for purposes of netting under the NNSR program.

The EPA also indicated in the proposal that we have interpreted the CAA to preclude the use of ozone IPT where an air agency chooses to include emissions reductions attributable to the NNSR air permitting in its initial 15 percent ROP plan for those Moderate or higher ozone nonattainment areas that are satisfying this ROP requirement for the first time under CAA section 182(b)(1)(A)(i). This interpretation results from the fact that the CAA requires that a state's initial ROP plan can be satisfied only via reductions in VOC emissions. Hence, the EPA proposed that such a plan could not count emission reductions attributable to a NNSR permitting program utilizing IPT flexibilities, for ROP purposes.[42]

Finally, the EPA in the November 17, 2016, proposal also explained that IPT could be implemented in several ways; the primary variable being the method in which the IPT ratio for ozone precursors is established by an air agency or permit applicant and applied in a particular ozone nonattainment area. That is, the EPA proposed that states be allowed to choose any of the options presented in the proposal. Accordingly, with the goal of providing flexibility to air agencies and sources, the EPA proposed and sought comment

[35] The EPA originally added these provisions specific to ozone to the NNSR regulation in 2015 as part of the final 2008 Ozone NAAQS SIP Requirements Rule. *See* 80 FR 12264 at 12288.

[36] *See* 81 FR at 81295–8.

[37] The EPA's prior guidance concerning the use of IPT to satisfy the NNSR requirements for emissions offsets was contained in a 2001 EPA document titled "Improving Air Quality with Economic Incentive Programs" (January 2001). The EPA's policy on IPT for ozone, as finalized through this rulemaking, supersedes the information contained in that earlier document specifically with respect to IPT.

[38] In the proposal, the EPA did not propose to change or seek comment on any existing NNSR emissions offsets requirements contained in the NNSR regulations at 40 CFR 51.165 and part 51 Appendix S. Existing NNSR emissions offset requirements are based largely on part D of title I of the CAA's nonattainment requirements. These existing requirements include the statutory offset ratios applicable in specific ozone nonattainment areas (based on an area's classification for ozone), geographic restrictions as to where creditable emissions reductions may be obtained and other criteria concerning the creditability of emissions reductions to be used as offsets.

[39] An IPT ratio sets the appropriate proportion for the amounts of each precursor in tpy of emissions, which is intended to ensure that the substitution of one ozone precursor for another in an offset transaction provides an equivalent or greater air quality benefit with respect to ground level ozone concentrations in the ozone nonattainment area. The IPT ratio is separate and distinct from the statutory offset ratios contained in the CAA that are directly associated with area classifications for ozone nonattainment areas. *See e.g.*, CAA Section 182(b)(5) (establishing an offset ratio of 1.15 to 1 for Moderate areas). Both ratios must be applied in determining the appropriate emissions offset that must be applied for a particular offset transaction if one ozone precursor is being used to offset a different ozone precursor. An example of a simple offset calculation with the application of an IPT ratio would be a major NNSR proposed source in a Moderate area seeking to offset a 200 tpy NO_X increase with reductions in VOC from another source or the respective SIP approved Emission Reduction Credit Bank. First, the 200 tpy NO_X offset is subject to the 1.15 Moderate area offset ratio, then the product is multiplied by the IPT ratio (either area-wide or case-specific derived from technical demonstration). If we assume the IPT ratio in this case is 5, the resulting equation is: (200 tpy NO_X) $\times$ ($1.15_{(\text{Moderate area offset ratio})}$) $\times$ (5 $VOC/NO_{X\ (\text{IPT ratio applied})}$) = 1,150 tpy total NO_X (offset) required for NNSR permitting purposes.

[40] Hereafter referred to as default IPT ratio(s) or default ratio(s).

[41] The draft Technical Guidance Document provided in the docket supports the division of a nonattainment area into sub-areas with a technical demonstration substantiating the need for separate ratios in specific portions of a nonattainment area.

[42] *See* section III.E of this preamble.

on the following implementation options:

a. Case-specific Permit Ozone IPT Ratios. Under a case-specific IPT ratio option, state plans would generally require each permit applicant who chooses to use ozone IPT as the means for satisfying the NNSR emissions offset requirement to calculate and submit to the reviewing authority the appropriate IPT ratio. In choosing this option, the state would be required to include for the EPA's approval a plan submission addressing NNSR program provisions that explicitly authorize case-specific IPT ratios for the particular ozone nonattainment area(s). Also, such a plan submission must include the procedures by which permit applicants may use IPT, including a description of the model(s) that will be used, the calculation of the IPT ratio, and a demonstration that such IPT ratio provides an equivalent or greater air quality benefit for ozone concentrations in the ozone nonattainment area. The EPA also proposed that the state's IPT provision must provide that any IPT ratio that an applicant proposes for an individual permit must be approved by both the reviewing authority and the EPA.

b. Area-specific Default Ozone IPT Ratio. Under the proposed area-specific default IPT option, the EPA proposed that a state plan could include a default IPT ratio that may be used by permit applicants to obtain IPT offsets for all applicable NNSR permits issued in a particular ozone nonattainment area. Under this proposed option, the state's plan submission would be required to provide a description of the model(s) used, the calculated ratio and the technical demonstration substantiating the equivalent or greater ozone benefit in that nonattainment area. The EPA further proposed that a ratio that has become part of an approved plan and has undergone public comment during the plan approval process would not require further EPA approval or be subject to additional public comment each time that ratio is utilized by individual permit applicants.

c. Combination of an Area-specific Default Ozone IPT Ratio and Case-specific IPT Ratios. As explained in the proposed rulemaking, the EPA believes that it is reasonable for air agencies to have the option of implementing as part of their NNSR programs either a case-specific IPT ratio or a default IPT ratio. The EPA also believes that air agencies with EPA-approved NNSR programs should have the option of implementing a combination of the two proposed options. Such a combined program would enable an air agency to develop a default IPT ratio, while at the same time allowing an individual permit applicant to propose an alternative case-specific IPT ratio (if it can demonstrate to the satisfaction of both the reviewing authority and the EPA that such alternative ratio is appropriate for the proposed offsetting transaction for a specific permit application).

d. Limitations for Implementing Ozone IPT under Appendix S. In the specific case where a state lacks an approved NNSR program and issues NNSR permits under the requirements contained in the EPA's Emission Offset Interpretative Ruling at 40 CFR part 51, Appendix S (Appendix S), the EPA proposed that states would be limited to the use of case-specific IPT ratios.

In addition to the four options proposed for implementing the IPT program for ozone, the EPA proposed to require air agencies to review any default IPT ratio(s) that is included in their EPA-approved IPT program at least every 3 years (from the air agency's prior plan submission containing any such area-specific default IPT ratio(s)) to ensure that the ratio continues to be valid for IPT offsets in the area. To meet this proposed requirement an air agency would need to submit new modeling to confirm that the ratio still defines an equivalent or greater air quality benefit relationship between VOC and NO_X emissions regarding ozone formation in the particular ozone nonattainment area.

At proposal, the EPA included a draft TGD in the docket. The purpose of this TGD was to provide air agencies with guidance on a technical approach to determine ozone impacts from precursor emissions for a specific nonattainment area or for case-by-case determinations.

2. Final Rule and Rationale

In this final rule, the EPA is promulgating a discretionary IPT program for ozone with changes from the proposed rulemaking based on comments received. The final rule allows states to implement their IPT program using any of the proposed implementation options as follows: (1) Default IPT ratios, (2) case-specific IPT ratios or (3) a combination of the two options, whereby a proposed source may, at the approval of the reviewing authority, propose a case-specific ratio in lieu of an available default IPT ratio. The following changes are being made in response to comments received: (1) Air agencies will not be required to obtain EPA approval of IPT ratios when implementing a case-specific IPT program or when applying default IPT ratios that are not included in the state regulations and the SIP; and (2) the required periodic review of any default IPT ratio must be conducted every 5 years, rather than every 3 years as proposed.

The EPA acknowledges, based on comments received, that the requirement of EPA approval of IPT ratios could impose additional burdens and result in permit delays. Hence, in the final rule, the EPA is eliminating this approval requirement for the case-specific ratios and for default ratios that are not included in state regulations and the SIP. In the spirit of cooperative federalism, the EPA encourages air agencies to both work with the EPA in the development of IPT ratios and notify the EPA after the development of any initial or revised area-specific default IPT ratio for a particular ozone nonattainment area. Finally, the EPA will, of course, also have an opportunity to review and comment on the application of any IPT ratio (default or case-specific) to a particular source or location during the public comment period afforded as part of the NNSR permitting process.

An air agency may choose to include a numerical default ratio in its NNSR regulations and the SIP to make that ratio controlling. Alternatively, if an air agency chooses not to include any numerical default IPT ratios in its regulations and SIP, EPA approval of the numerical default ratio is no longer required. However, for any such air agency, the final rule still requires the SIP to include (1) the authority to implement IPT; (2) a description of the air quality model(s) that may be used to develop any default IPT ratio; and (3) a description of the approach that the air agency will use to develop any default IPT ratio, which must show that such ratios provide an equivalent or greater ozone air quality benefit in the applicable ozone nonattainment area. The final rule also requires air agencies with IPT programs that authorize case-specific IPT ratios to require permit applicants to include along with the submittal of the proposed case-specific ratio similar information pertaining to the development of the ratio.

A default IPT ratio that is not in a state regulation and an approved SIP would be subject to public comment for each use in individual permits. Therefore, states may want to include numerical default IPT ratios in their regulations and submit them to the EPA for approval as part of the SIP. In such an instance, the regulation containing the area-specific default IPT ratio would be reviewed by the EPA as part of the SIP submission and, if approved, would provide states and other stakeholders with greater certainty that the IPT ratio will be applicable to all permit